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FEB 4 2015  
TOWN CLERK  
WESTFORD

**Town of Westford**  
**Zoning Board of Appeals**  
Town Hall  
55 Main Street  
Westford, Massachusetts 01886  
(978) 692-5524 · Fax: (978) 399-2732

**MEETING AGENDA**  
**Wednesday, February 25, 2015**  
**7:00 PM Meeting**  
**Blanchard Middle School Auditorium**  
**14 West Street, Westford, MA 01886**

**7:00 PM Executive Session**

To discuss strategy with respect to litigation, related to Newport Materials, LLC, vs. Planning Board of Westford, et al., as an open meeting may have a detrimental effect on the bargaining or litigation position of the town.

**7:30 PM Open Forum**

**7:35 PM BOA 1501 SP (2) VAR (2) – 20 Commerce Way (also known as 540 Groton Road) (Newport Materials LLC and 540 Groton Road LLC)**  
*Public hearing for 540 Groton Road, LLC and Newport Materials, LLC to request the following petitions (and any other permit or relief as may be required under the Town of Westford Zoning Bylaw) in association with the development of an asphalt manufacturing facility and associated materials stockpile yard. The subject property is identified as Assessor's Map 048 Parcel 0011 Lot 0234 and is within the Industrial A Zoning District.*

- Variance under Section 3.1.1 to allow an additional principal use on the lot.
- Variance under Section 10.2 regarding the definition of the term "quiet" within the definition of Light Manufacturing.
- Special Permit under Section 9.3 pursuant to Section 3.1 to allow for multiple principal uses on the site.
- Special Permit under Section 3.6.2 for the extension of a pre-existing nonconforming use on a single lot.

The above-listed petitions are related to a recent Decision issued by Land Court (10 MISC 429867). Materials related to these applications and the Land Court decisions can be found on the Planning Board's Web Page under the tab "Asphalt Plant" at:  
[http://www.westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA\\_planning/index](http://www.westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA_planning/index)

Any person interested or wishing to be heard on the application(s) should appear at the time and place designated or submit written correspondence to the Zoning Board of Appeals. All written comments received prior to the close of the public hearing will be included in the written record for this application. Email correspondence should be sent to: [jmorrisette@westfordma.gov](mailto:jmorrisette@westfordma.gov)

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Victoria Johnson at 978-692-5524 or email to [vjohnson@westfordma.gov](mailto:vjohnson@westfordma.gov).

## Executive Session

20 Commerce Way  
(also known as 540 Groton Road)  
BOA1501SP (2) VAR (2)



RECEIVED  
FEB 4 2015  
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File Number: BOA 1501 SP VAR  
20 Commerce Way (also known as 540 Groton Road)  
Newport Materials

Town of Westford  
**Board of Appeals**

55 Main Street  
Westford, Massachusetts 01886  
TEL (978) 692-5524 FAX (978) 399-2732

**Public Hearing Notice and Posting**

In accordance with the provisions of MGL Chapter 40A Section 11, notice is hereby given of a public hearing to be held by the Westford Zoning Board of Appeals **starting at approximately 7:35 p.m. on Wednesday, February 25, 2015**, at **Blanchard Middle School Auditorium**, 14 West Street in Westford, to consider an application of **540 Groton Road, LLC and Newport Materials, LLC** for the following petitions (and any other permit or relief as may be required under the Town of Westford Zoning Bylaw) in association with the development of an asphalt manufacturing facility and associated materials stockpile yard. The subject property is located at 20 Commerce Way (also known as 540 Groton Road) and identified as Assessor's Map 048 Parcel 0011 Lot 0234 and within the Industrial A Zoning District.

- Variance under Section 3.1.1 to allow an additional principal use on the lot.
- Variance under Section 10.2 regarding the definition of the term "quiet" within the definition of Light Manufacturing.
- Special Permit under Section 9.3 pursuant to Section 3.1 to allow for multiple principal uses on the site.
- Special Permit under Section 3.6.2 for the extension of a pre-existing nonconforming use on a single lot.

The above-listed petitions are related to a recent Decision issued by Land Court (10 MISC 429867). Materials related to these applications and the Land Court decisions can be found on the Planning Board's Web Page under the tab "Asphalt Plant" at:

[http://www.westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA\\_planning/index](http://www.westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA_planning/index)

A copy of the application, **file number BOA 1501 SP (2) VAR (2)** and accompanying information may also be viewed at the Permitting Office located on the second floor of Town Hall, 55 Main Street during normal business hours (8:00 a.m. to 4:00 p.m.).

Any person interested or wishing to be heard on the application(s) should appear at the time and place designated, or submit written correspondence to the Board of Appeals. All written comments received prior to the close of the public hearing will be included in the written record for this application. Email correspondence should be sent to [jmorrisette@westfordma.gov](mailto:jmorrisette@westfordma.gov)

Robert Herrmann, Chair  
Westford Board of Appeals

☐ MAILED  
2-5-15

File Number: BOA 1501 SP VAR  
20 Commerce Way (also known as 540 Groton Road)  
Newport Materials

PLEASE PLACE THIS AD IN THE **LOWELL SUN** ON:

**Wednesday, February 11, 2015**

**and**

**Wednesday, February 18, 2015**

PLEASE SUBMIT BILL TO:

**Douglas C. Deschenes  
Deschenes & Farrell, P.C.  
515 Groton Rd, Suite 204  
Westford, MA 01886  
(978) 496-1177**

If you should have any questions, please contact Permitting Assistant Victoria Johnson at (978) 692-5524.



**Town of Westford  
Board of Appeals**

Town Hall  
55 Main Street  
Westford, Massachusetts 01886  
TEL (978) 692-5524 FAX (978) 399-2732

**STAFF REPORT**

Date: February 20, 2015  
To: Zoning Board of Appeals  
From: Jeffrey Morrisette, Town Planner  
Meeting: February 25, 2015  
Re: BOA 1501 SP SP VAR VAR – 540 Groton Road (also known as 20 Commerce Road)

**I. PROJECT INFORMATION**

Property Owner: 540 Groton Road, LLC & Newport Materials, LLC  
Petitioner: Richard DeFelice  
Agent: Douglas C. Deschenes, Attorney  
Site Address: 540 Groton Road  
Map and Parcel: Map 048 Parcel 0011, Lots 0234, 0248 & 0249  
Lot Size: 115 acres +/-  
Requested Actions:  
1. Variance per Section 3.1.1 to allow an additional principal use on the lot;  
2. Variance under Section 10.2 regarding the term “quiet” within the definition of Light Manufacturing;  
3. Special Permit per Section 9.3 pursuant to Section 3.1 to allow for multiple principal uses on the site;  
4. Special Permit per Section 3.6.2 for the extension of a pre-existing nonconforming use on a single lot.  
Zoning District: Industrial A (IA)  
Surrounding Zoning & Uses: Industrial A, Concrete Plant, Fletcher Quarry, Conservation land  
Decision Deadline: 90 Days after close of public hearing

Key Dates	BOA 1501 SP SP VAR VAR 540 Groton Road
Petitioner's applications received by the Town Clerk	January 5, 2015*
Parties in interest verified by Board of Assessors	December 17, 2014
Notice of Public Hearing mailed to parties in interest	February 5, 2015
Notice of Public Hearing posted in Town Hall	February 4, 2015
Notice of Public Hearing published in “Lowell Sun”	February 11 & February 18, 2015
*A second Variance application (petition for term “quiet”) was received on January 16, 2015	

**II. PROJECT DETAILS:**

1. The applicant seeks permission to construct an asphalt manufacturing facility (facility) which is to be integrated with an existing materials processing yard with crusher machine. The proposed facility

(size unknown) is located in the middle of an approximate 115-acre lot; about 92 acres are located in Westford, with the remainder located in Chelmsford. The subject property consists of three tax parcels, all owned by the petitioners. An estimated twenty-two acres of the subject property are developed with a solar array.

2. Concurrent applications are being reviewed by the Planning Board for Site Plan Review, Special Permit for a Major Commercial Project, Special Permit for above-ground storage of hazardous waste in quantities greater than normal household use (10,000-gallon tank) within a Zone III of a Water Resource Protection Overlay District (WRPOD), and a Stormwater Management Permit.
3. According to information provided by the applicant, the asphalt manufacturing facility consists of the following major components:
  - A 12' x 36' Operator Control Center on skids;
  - Six (6) 10' x 14' Cold Feed Bins with a loading ramp from the materials yard;
  - Conveyor belts between the bins, vibrating screener and the processing unit (Gencor 400);
  - A 5' x 14' Vibrating screen between the bins and the Gencor 400;
  - One (1) proposed and "Future" 10' x 15' Recycled Asphalt Product (RAP) bin adjacent to RAP stockpile and ramp in materials processing yard;
  - Gencor 400, a machine that receives the ingredients from conveyor belts, which is controlled remotely and mixes the products together;
  - An 86' conveyor belt that takes the mixed product from the Gencor 400 to the silos;
  - Four (4) 200-ton silos (68' in height) and two (2) future silos that allow for hot asphalt to be loaded into trucks;
  - Tank Farm with two (2) 30,000-gallon indirect fired Asphalt Cement (AC) vertical tanks with unloading pumps (36 feet in height);
  - HYCGO Gencor 100 hot oil heater with expansion tank stand;
  - Lawn area, landscaping;
  - Parking spaces and sidewalk with curbing;
  - Security fence with four entrance/exit gates;
  - Two truck scales near the silos;
  - One water well with a water line into the control booth;
  - Proposed utilities – natural gas line to provide fuel for the burners in the Gencor 400;
  - Site lighting with 20' fixtures around the asphalt manufacturing facility;
  - Dumpster;
  - Two (2) 31,000-gallon fire cisterns;
  - Ground mounted signs including visitor, truck and directional signs;
  - Stormwater management facilities such as water quality swales; and
  - A 10,000-gallon above-ground storage tank for Number 2 fuel oil.

The materials processing yard to be integrated with the asphalt manufacturing facility contains the following components:

- Recycled Asphalt Product stockpile with a "Radial Stacker";
- Crushing plant;
- Entrance driveway and internal gravel driveway;
- Loading ramps and 7-8 stockpile areas;
- Office and storage trailers (no parking area shown on plan).

4. The petitioner seeks multiple forms of relief for the proposal and has filed four (4) separate petitions with the Zoning Board; each are described in more detail below. Several of the petitions were filed as a direct result of a recent Land Court Decision (LC Decision). A copy of said LC Decision is included as part of the petitioner's application. (*Refer to 10 MISC 429867 (AHS) – Newport Materials, LLC and 540 Groton Road, LLC, Plaintiffs, vs. Planning Board of the Town of Westford and the Town of Westford, Defendants*) It is important to note that while the petitioner and Planning Board are both party to the LC Decision, the Zoning Board of Appeals (Board) is not. Consequently, the Board is not bound by any of the orders, timeframes, findings or opinions enumerated in the LC Decision, and should independently review these petitions, and render decisions based solely on the petitioner's ability to address the applicable Variance and Special Permit criteria to the Board's satisfaction.

**BOA 1501 A:**

**Variance under Section 3.1.1 of the Zoning Bylaw to allow an additional principal use on the lot.**

The petitioner seeks permission to allow an additional principal use (asphalt manufacturing facility) on the lot. The petitioner is under Court Order to submit this petition. It is worthwhile noting that this petition does not address whether or not the proposed facility is considered as Light Manufacturing under the Zoning Bylaw, but merely whether or not to allow another principal use on the lot.

So as the Board can make an informed decision on this Variance request, Staff recommends the following:

1. That the petitioner first gives a detailed description of all current and approved (even if not currently existing) uses on the portions of the lot(s) within Westford.
2. That the petitioner clarify the status of the Commerce Way subdivision, and whether or not Commerce Way or Lot 2 (as shown on Plan Book 233 Plan 133 and attached for the Board's reference) is included as part of the subject property. In other words, clarify what is the "lot". (*Based on areas listed, it appears that Commerce Way and Lot 2 are included as part of the "lot" currently before the Board.*)

**Per §9.2.2.2 Variance.**

[The Board of Appeal's powers include...] *To hear and decide appeals or petitions for variances from the terms of this Bylaw, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10, where owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw. A use variance may be granted by the Board of Appeals to authorize a use or activity not otherwise permitted in the district in which the land or structure is located.*

**Variance Criteria:**

MGL C.40A §10 requires that the grant of a variance be made only when the Board of Appeals finds the following three "Required Findings" have been reached in the affirmative. The Board must reach affirmative conclusions for all three findings.

- a. *Required Finding #1: Soil conditions, shape or topography*
- b. *Required Finding #2: Hardship*
- c. *Required Finding #3: Public Good*



**BOA 1501 B:**

**Variance under Section 10.2 of the Zoning Bylaw regarding the term “quiet” within the definition of Light Manufacturing.**

The petitioner is not under Court Order to submit this petition. However, Staff acknowledges that the LC Decision indicates that such a petition *would* be required *if* the Planning Board were to waive noise attenuation requirements. (Refer to page 29 of the LC Decision, including footnote 39.)

Staff strongly recommends that the Board postpones taking action on this Variance petition relating to the term “quiet” under Section 10.2 of the Zoning Bylaw, as this petition is not yet ripe because concurrent applications are before the Planning Board, and unless the Planning Board waives construction of required noise attenuation barriers (under the Special Permit for a Major Commercial Project), the requested relief is not required from the Board of Appeals. Since granting Variance relief gives permission to “break” the Zoning Bylaws, the Board should generally grant the minimum amount of relief necessary for a given proposal. At this time, it is unknown if any relief (and to what degree) is required.

**Per §9.2.2.2 Variance.**

[The Board of Appeal’s powers include...] *To hear and decide appeals or petitions for variances from the terms of this Bylaw, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10, where owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw.* A use variance may be granted by the Board of Appeals to authorize a use or activity not otherwise permitted in the district in which the land or structure is located.

**Variance Criteria:**

MGL C.40A §10 requires that the grant of a variance be made only when the Board of Appeals finds the following three “Required Findings” have been reached in the affirmative. The Board must reach affirmative conclusions for all three findings.

- d. Required Finding #1: Soil conditions, shape or topography*
- e. Required Finding #2: Hardship*
- f. Required Finding #3: Public Good*

**BOA 1501 C:**

**Special Permit under Section 9.3 pursuant to Section 3.1 of the Zoning Bylaw to allow for multiple principal uses on the lot.**

The petitioner seeks Special Permit relief to allow an additional principal use (asphalt manufacturing facility) on the lot.

After carefully reviewing the requested petition with respect to the Zoning Bylaw, Staff is of the opinion that the petition request is not valid. In other words, the requested form of relief is not a proper mechanism under the Zoning Bylaw for achieving the goal of allowing multiple principal uses on the lot. Instead, the appropriate form of relief is the Variance sought in BOA 1501 A. Staff respectfully recommends that the Board request the petitioner to withdraw this petition, or make a finding that the application is invalid under the Zoning Bylaw.

Special Permit Criteria:

Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, only upon its written determination that the proposed use or structure(s) shall not cause substantial detriment to the neighborhood or the town, taking into account the characteristics of the site and of the proposal in relation to that site. In addition to any specific factors that may be set forth elsewhere in this Bylaw, such determination shall include consideration of each of the following:

- a. *Social, economic, or community needs which are served by the proposal;*
- b. *Traffic flow and safety, including parking and loading;*
- c. *Adequacy of utilities and other public services;*
- d. *Neighborhood character and social structures;*
- e. *Impacts on the natural environment; and*
- f. *Potential fiscal impact, including impact on town services, tax base, property values, and employment*

**BOA 1501 D:**

**Special Permit pursuant to Section 3.6.2 of the Zoning Bylaw for the extension of a pre-existing nonconforming use on a single lot.**

The petitioner seeks Special Permit relief to allow for the extension of pre-existing nonconforming uses (retail, general service establishment) on a single lot. The petitioner is not under Court Order to submit this petition.

So as the Board can make an informed decision, Staff recommends that the petitioner describe the current nonconforming uses on the lot, and explain how the proposed facility is either a change or extension of one of the existing nonconforming uses on the lot.

Special Permit Criteria:

Prior to granting approval for this petition, the Board must first make a determination that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

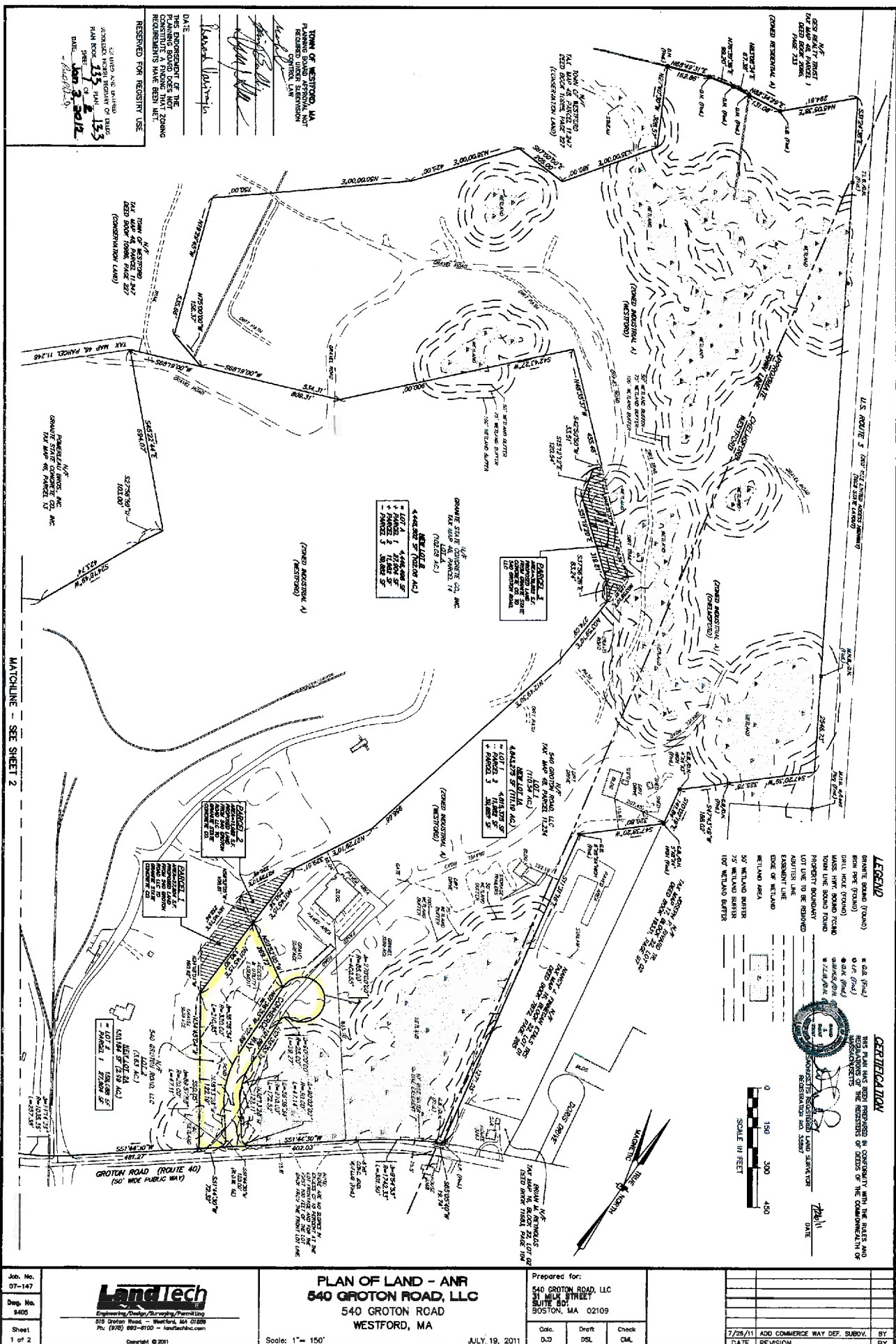
**III. STAFF RECOMMENDATIONS:**

1. That the petitioner present a general overview of the proposal, including sufficient background information to facilitate discussion of each of the four (4) petitions;
2. That the Board review and act on each petition separately, similarly having the petitioner address the corresponding criteria separately for each specific petition request;
3. That the Board has benefit of reviewing a draft decision(s) prior to taking final action on any of these petitions.
4. That the Board advises Staff and the petitioner what additional information, if any, the Board needs for its deliberations. *(For example, information on projected traffic impacts, plans indicating all existing, approved, and proposed uses on the lot, etc.)*

**IV. NOTE:**

1. Granting approval for any of the various petitions by the Zoning Board of Appeals does not obviate the requirement for a Special Permit for a Major Commercial Development from the Planning Board.

cc: Building Commissioner  
Applicant

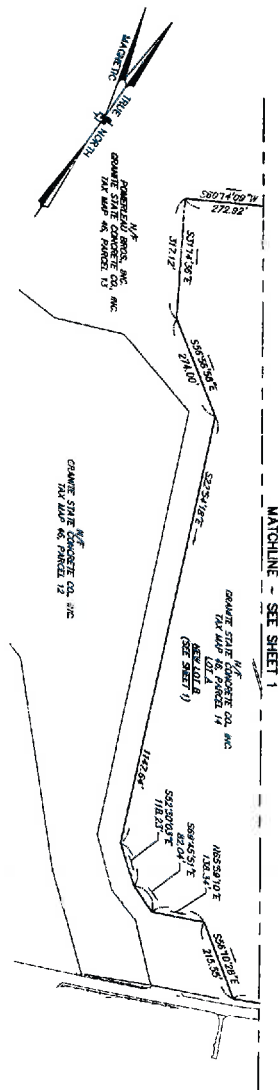


TOWN OF WESTFORD, MA  
PLANNING BOARD APPROVAL NO  
REQUIRED UNDER SUBDIVISION  
CONTROL LAW

Personal Varsity

THIS ENDORSEMENT OF THE PLANNING BOARD DOES NOT CONSTITUTE A FINDING THAT ZONING REQUIREMENTS HAVE BEEN MET.

RECEIVED AND ENTERED  
ADDRESS NORTH REGISTRY OF DEEDS  
PLAN BOOK 235 PLAN 133  
SHEET 2 OF 2  
DATE Jan 5, 2012  
JAN 5 2012



**MATCHLINE - SEE SHEET**

## LEGEND

30" METLAND BUFFER	CHAMFL. CLAD (FANAL)	B.C.R. (FANAL)
15" METLAND BUFFER	IRON PIPE (FANAL)	O.A. (FANAL)
75" METLAND BUFFER	IRON HOLE (FANAL)	D.H. (FANAL)
10" METLAND BUFFER	BASS HWY. BOUND FANAL	M.B./D.H. (FANAL)
	TURN LANE BOUND FANAL	T.L.B./D.H. (FANAL)
	PROPERTY BOUND FANAL	
	DO NOT USE TO BE REMOVED	
	ADJUST LINE	
	BOOMPORT LINE	
	EDGE OF FANAL	
	BEHIND AREA	

A rectangular diagram with a dashed line inside, labeled 'A'.

## DEED REFERENCES

ALM.D.R.D. DEED 800K 10055, PAGE 45

### ASSessor's REFERENCES

CHILDSFORD  
TAX MAP 16, BLOCK 22, PARCEL  
TAX MAP 10, BLOCK 22, PARCEL  
TAX MAP 10, BLOCK 22, PARCEL  
TAX MAP 44, PARCEL 11249  
TAX MAP 48, PARCEL 11248  
TAX MAP 48, PARCEL 11234  
TAX MAP 48, PARCEL 11234

## RECORD OWNERS

GRANITE STATE CONCRETE CO., INC.  
180 PHOENIX AVE.  
LOWELL, MA 01852

## PLAIN REFERENCE

1. PLAN ENTITLED "PLAN OF LAND AND AIR CATHARTICALLY TREATED WASTE" - DMC. NO. 9107, DATED JANUARY 8, 2010. PREPARED BY LANDTECH CONSULTANTS, INC. AND RECORDED AT M.I.D.R.O. PLAN BOOK 232, PLAN 118.
2. PLAN ENTITLED "PLAN OF LAND - DEFINITIVE SUBDIVISION - COMMERCE WAY - DMC. NO. 9107, DATED JANUARY 8, 2010. PREPARED BY LANDTECH CONSULTANTS, INC. AND RECORDED AT M.I.D.R.O. PLAN BOOK 232, PLAN 118.

## NO 7145

[illegible]

**CERTIFICAZIONE**

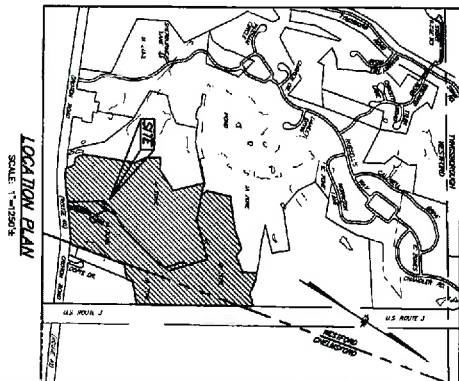
THIS HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND  
REGULATIONS OF THE REGISTRARS OF DEEDS OF THE COMMONWEALTH OF  
MASSACHUSETTS.

12/24/47

MASSACHUSETTS REGISTERED LAND SURVEYOR

RECEIVED JAN 10 1948

DATE



SCALE: 1"=1250'±



Job, No.  
07-147

Dwg. No.  
B405

Sheet  
2 of 2

**LandTech**  
Engineering/Design/Surveying/Permitting  
515 Gorton Road, - Westford, MA 01886  
Ph: (878) 882-8100 - [landtechinc.com](http://landtechinc.com)

PLAN OF LAND - ANR  
540 GROTON ROAD, LLC  
540 GROTON ROAD  
WESTFORD, MA

Prepared for:  
540 GROTON ROAD, LLC  
31 MILK STREET  
SUITE 501  
BOSTON, MA 02109

Calc.	Draft	Check
DJD	DSL	CML

Scale: 1" = 150'

JULY 19, 2011

7/28/11	ADD COMMERCE WAY DEF. SUBDV.	BY
DATE	REVISION	BY

DESCHENES & FARRELL, P.C.

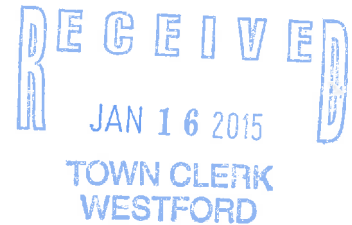
Attorneys at Law  
515 Groton Road, Suite 204  
Westford, MA 01886  
Telephone: (978) 496-1177  
Facsimile: (978) 577-6462

*Douglas C. Deschenes*  
*Kathryn Lorah Farrell*  
*Melissa E. Robbins\**

*\*Admitted in MA and NH*

January 16, 2015

Town of Westford  
Zoning Board of Appeals  
55 Main Street  
Westford, MA 01886



**RE: 540 Groton Road; Variance Application  
Application pursuant to Remand Decision dated  
December 8, 2014 of the Land Court,  
10 Misc 529867 (AHS), Newport Materials, et al  
v. Planning Board of Westford, et al (the "Decision")**

RECEIVED JAN 16 2015

Dear Members of the Board,

Please be advised that this office represents 540 Groton Road, LLC and Newport Materials, LLC (collectively the "Applicant" or "Newport"), regarding the property located at 540 Groton Road (the "Site"). As you are aware, we have recently filed an application with the Zoning Board in conformance with the Massachusetts Land Court Decision referenced above. However, after further review of the decision and the necessary permits required for the Project, it has been determined that an additional Variance may be required. Therefore, please accept this letter and the attached application and material as an additional Variance request to be combined with our earlier filing.

**1. VARIANCE UNDER SECTION 9.2.2**

Pursuant to Section 9.2.2(2) of the Town of Westford Bylaw (hereinafter the "Bylaw"), the Board has the power to grant dimensional and use variances. Under the Bylaw definition of "Light Manufacturing", in order to qualify as a Light Manufacturing use, the process must utilize "hand labor or quiet machinery and processes...". However, the definition does not define what constitutes "quiet". As a result of the recent Land Court litigation and as expressed in the Decision, the Court found that in determining what constituted "quiet", the Planning Board should look to the sound standards under the Planned Commercial Development Bylaw.

Based on those standards, in order to meet the definition of Light Manufacturing, the Project must not generate sound levels of greater than 70 dBA at any property boundary and the Project must not raise the sound level at any property boundary by more than 10 dBA.

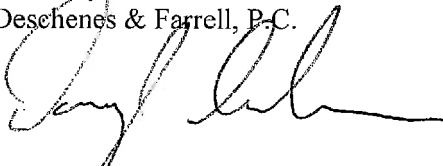
As part of its Decision, the Court also determined the expected sound levels to be generated by the Project. Those levels are shown on the attached Exhibit A. As you will see, the Project will exceed the 70 dBA limit and will exceed the 10 dBA increase limitation on the western property boundary of the Project. The expected sound levels at the western property boundaries have been determined by the court to be 75 dBA which constitutes a 32 dBA increase over the existing ambient sound level (43 dBA). Therefore, we are specifically requesting a Variance from the required 70 dBA sound level and the 10 dBA increase limitation.

In Exhibit A, attached and incorporated herein, Newport presents the basis for the grant of a variance to allow for the 75dBA sound level and the expected 43dBA dBA sound level increase at the westerly boundary.

We look forward to working with the Board toward approval of this application. Enclosed, please find an application for the Variance being requested as well as the required filing fee. Please note that all other supporting material has been previously filed.

Thank you for your time and consideration in this matter. Please contact me should you require any further information.

Sincerely,  
Deschenes & Farrell, P.C.



Douglas C. Deschenes

Enclosures.

## EXHIBIT A

### Variance Criteria:

The Site is clearly unique as to its soils, shape and topography which creates hardship relative to the utilization of the site for its intended and allowed purposes. The site is very large, encompassing over 115 acres yet has a relatively small amount of road frontage and only a single access point. The location of hydric soils and wetlands on and about the Site severely limit the access to the Site and impact the location of uses within the Site. Given the historic quarrying operations on the Site, a majority of the soils on the Site have been dramatically altered by way of excavation and filling activities. These activities have also resulted in significant topography changes (i.e. pits to piles) and alterations to natural contours. More specifically, the western boundary of the property has dramatic topography whereby the ground rises significantly to a height of over 35 feet (35') creating a near vertical wall. Overall, the unique nature of the Site creates hardships relative to the allowed and practical uses of the Site.

The unique soil conditions, shape and topography of the Site do not generally affect the zoning district in which it is located. While the abutting Fletcher quarry may share some of the unique qualities of the Site, including dramatic topography changes, they were in fact originally part of the same parcel. However unique conditions of the Site are not generally shared among the IA zoned areas of Westford. I do not believe any other split lot IA zoned parcels exist. The majority of Industrial A land in Westford does not share these conditions, they are unique to the Site.

A literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the petitioner. Denial of the Variance will result in a financial hardship to the Applicant owing to its then inability to utilize such a large parcel for its intended and allowed purposes. The site has historically had multiple industrial uses. It is a logical and ideal location for the proposed Light Manufacturing use. Denial of the Variance in this instance would create a financial hardship to the Applicant who has and continues to pay real estate taxes based on the allowed uses on the property and has a large parcel of land which can more than reasonably support multiple uses.

The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw. It has been determined through the Planning Board review of the proposed use and in the subsequent appeal (see Decision previously submitted), that the proposed Light Manufacturing facility will not constitute a public health or safety hazard. An increase in the western property boundary sound level from 70 to 75 dBA will actually be a relatively imperceptible increase in sound. Furthermore, as discussed above, the use will provide public benefits in terms of employment opportunities, added tax base and revenue. In fact, throughout the Planning Board and appeal processes, no substantial detriment associated with the proposed use was determined to exist.

Regarding the intent of the Bylaw, it can be reasonably assumed that the purpose and intent of the requirement for "quiet" processing is intended to protect the health, safety and welfare of the abutting properties and their inhabitants by providing for adequate protection against excessive sound. It is important to note that the Project is located in the center of a 115 acre parcel some 1400 feet from the public roadway and over 1300 feet from the nearest residential neighbor. More telling is the fact that the western boundary (for which the variance is sought), directly abuts the Fletcher quarry, an active, heavy industrial use. Furthermore, the

owner of this property has provided written support of the proposed project. That property is also subject to covenants which prohibit it from ever being used for residential purposes, thus eliminating the possibility of people living on the western boundary. Given that the Fletcher quarry has existed for over 100 years it is likely that it will continue to operate in that capacity for years to come.

In essence, the intention of the bylaw is to protect abutters. In this case, the abutter is a granite quarry. The people who work there are subjected to noise levels far in excess of those to be generated at the western boundary of the Project. It is questionable, given the topography at the western boundary and the sound generated internally by the quarry, whether the sound from the Project will even be heard by those within the quarry. As an abutter, the quarry (through its owner), neither wants nor needs to be protected from the proposed sound levels to be generated by the Project, which levels will exceed the 70 dBA limit by only 5 dBA. Therefore, the relief can be granted without derogating from the purpose and intent of the Bylaw.

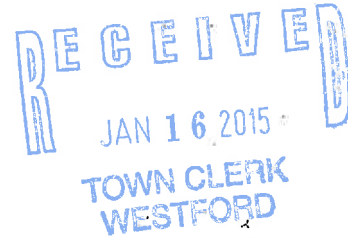




TOWN OF WESTFORD  
ZONING BOARD OF APPEALS

55 Main Street  
Westford, Massachusetts 01886  
TEL (978) 692-5524 FAX (978) 399-2558

Variance



Date: 1/16/2015

Pursuant to the provisions of Section 9.2.2 of the Zoning Bylaw, the undersigned hereby petitions your Board for a Variance from the terms of Section 10.2\* which will allow the construction or addition to the dwelling or building located at: 540 Groton Road

The proposed construction will include: Development of a Light Manufacturing Bituminous Concrete Facility.

\*Section 10.2 General Definitions, specifically a Variance regarding the definition of the term "quiet" within the definition of Light Manufacturing.

It is the opinion of the petitioner that unless relief is granted by your Board, substantial hardship, as defined in Section 9.2.2-(2) will result. A hearing is therefore requested at your next Board Meeting.

FEE: \$200.00 ZONING DISTRICT: IA

Is your project subject to review by other Westford Boards/Committees?

If yes, please identify \_\_\_\_\_

Owner of Property: 540 Groton Road, LLC and Newport Materials, LLC

Mailing Address: 164 Burke St., Nashua, NH 03060

Phone: Work: 603-882-1700 Home: \_\_\_\_\_

Signature of Owner(s): 

Petitioner (If other than owner): Richard A. DeFelice

Mailing Address: 164 Burke St., Nashua, NH 03060

Phone at Work: 603-882-1700 Home: \_\_\_\_\_

Signature of Petitioner: 

\* and any other permit relief as may be required under the Westford Zoning By-Law to allow the proposed use/project.

DESCHENES & FARRELL, P.C.

Attorneys at Law  
515 Groton Road, Suite 204  
Westford, MA 01886  
Telephone: (978) 496-1177  
Facsimile: (978) 577-6462

RECEIVED JAN 5<sup>th</sup> 2015

*Douglas C. Deschenes*  
*Kathryn Lorah Farrell*  
*Melissa E. Robbins\**

*\*Admitted in MA and NH*

January 5, 2015

Town of Westford  
Zoning Board of Appeals  
55 Main Street  
Westford, MA 01886

RECEIVED  
JAN 5 2015  
TOWN CLERK  
WESTFORD

**RE: 540 Groton Road; Variance/Special Permit Application  
Application pursuant to Remand Decision dated  
December 8, 2014 of the Land Court,  
10 Misc 529867 (AHS), Newport Materials, et al  
v. Planning Board of Westford, et al (the "Decision")**

Dear Members of the Board,

Please be advised that this office represents 540 Groton Road, LLC and Newport Materials, LLC (collectively the "Applicant" or "Newport"), regarding the property located at 540 Groton Road (the "Site"). This Special Permit/Variance filing is being done in accordance with the Massachusetts Land Court Decision, Newport Materials, LLC and 540 Groton Road, LLC vs. Michael Green, et al., which Decision is attached hereto. As directed by the Court on page 11 of the Decision, I am hereby requesting a Special Permit pursuant to Section 9.3 of the Bylaw to allow for multiple uses on the Site.

**1. SPECIAL PERMIT UNDER SECTION 9.3**

In the 33-page Decision (attached and incorporated herein), concerning Newport's proposed asphalt facility, the Court provided direction as to how Newport applications should proceed on remand. Newport intends to follow each direction of the Court concerning submission of applications for approval of Newport's light manufacturing facility (i.e. asphalt facility), a proposed "use by right," in the remand submissions.

The Land Court states at p. 29 of the Decision: "[It] is difficult to imagine a more suitable location for the construction of an asphalt plant than where Plaintiffs propose to build it, nor a more economically optimal use of Locus than the processing of the products of the next-door quarry." (Decision, p. 29). Newport will file applications with the Westford Planning Board (the "Planning Board") for those permits (site plan approval, MCP and WROPD), which are within the jurisdiction of the Planning Board.

Newport's compliance with the definition of "light manufacturing," a "use by right" in the Industrial A ("IA") zone where the site is located, is accomplished by: (1) Limiting (through installation of sound attenuation barrier) any noise reading to 69 dBA at the westerly border;<sup>1</sup> (2) Newport will stipulate that vehicle trips will not exceed 250 vehicle trips per day; (3) Newport will use electric or natural gas power source for the asphalt facility; (4) Newport will employ 5 or more employees. When Newport accomplishes the above filings on or before January 5, 2015, in accordance with the Decision, the Planning Board will have before it a proposed "use by right" in the IA zone pursuant to sections 3.1, 9.2.2, 9.3.1, 10.1 and Appendix A of the Westford Zoning Bylaw (the "ZBL").<sup>2</sup>

The reason that Newport points out these matters to the Board is because it is relevant to the standard of proof for the requested Special Permit from the Board (multiple uses on one lot), specifically, "no substantial detriment." The Special Permit application to the Board (attached) is to allow for multiple principal uses on the 115-acre Site. The Board Special Permit is decided under a standard of "the proposed use...shall...not cause *substantial detriment* to the neighborhood or the town, taking into account the characteristics of the site and of the proposal in relation to that site." (See Decision, p. 11).

All previous filings and materials made to the Planning Board are incorporated in this filing. Newport presents to the Board a Special Permit request that should be granted "to allow more than one "principal" use on the 115-acre industrial Site because there is no substantial detriment as established, without limitation, by the following:

1. The proposed asphalt facility will meet the requirements of a "use by right" in the IA zone;
2. The minimum lot size for a principal use in the IA zone is 40,000 sq. ft. The site is over 100 times that minimum lot size for a principal use.<sup>3</sup> Currently, there are no less than 5 principal uses on the 115-acre site, and there is no substantial detriment to adding the proposed asphalt facility, a light manufacturing use by right. The Site is located in the Industrial A "IA" zoning district according to the Town of Westford Zoning Map updated through Annual Town Meeting, March 12, 2014. As you may be aware, there are various existing multiple principal uses currently operating on the Site, including storage of materials, storage of trailers and equipment, and various industrial uses such as quarrying, crushing and processing that also have a component of retail sales to

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<sup>1</sup> It should be noted that Fletcher Quarry ("Fletcher"), an industrial abutter to the west supports Newport's asphalt plant, a use by right. Notwithstanding support of the westerly industrial abutter, Newport has complied with the 69 dBA sound attenuation. The Decision, p., notes that Newport may consider a waiver request given the support of the westerly industrial abutter.

<sup>2</sup> "[I]f Plaintiffs submits revised plans for the Project that include (a) a commitment to employ five or more employees and (b) plausible means of noise attenuation such that the noise impact on the West Boundary Line would be 69 dBA or less, it is the opinion of this court that the Project would be allowed as of right at Locus, subject to the requirements (discussed below) as to obtaining MCP and WRPOD special permits, as well as a special permit to operate multiple principle uses at the Groton Parcel (which, the court expects, given the multiple uses already being conducted at the Groton Parcel, would be routinely granted)...such a renewed application should also address the issue of whether the Project will include any non-electrical motorized power sources, and whether any such source would be "substantially noiseless and inoffensive." (Decision, p. 29)

<sup>3</sup> The land could be subdivided to create dozens of principal uses.

commercial, industrial, and individual buyers. There are also office building, wood processing and solar power generating uses on the Site. Lastly, although the facility has not been built, a permit has been previously approved that allows a self-storage facility on the Site. A number of these use are considered “Principal Uses” as defined by “Appendix A: Table of Principal Use Regulations” of the Bylaws, including, but not limited to Retail Sales to General Public, Retail Sales to Industrial or Commercial Buyers, Business or Professional Office; General Service Establishment and Quarrying and Mining.

3. As evidenced by Exhibit A attached hereto, Newport meets the six (6) criteria (Section 9.3.2 of the Bylaw), of the Board Special Permit review of “no substantial detriment” in allowing this use by right as part of the multiple principal uses on the 115-acre site.

## 2. SPECIAL PERMIT UNDER SECTION 3.6.2

In the alternative, or as part of a Special Permit sought under Section. 9.3.1 of the Bylaw (see Decision, p. 11),<sup>4</sup> Section 3.6 of the Bylaw, also allows the Board to grant a Special Permit for a “change or extension” of a pre-existing nonconforming use. The Site is pre-existing non-conforming as to multiple principal uses on a lot, as a number of the existing principal uses have been in place since the turn of the century. The history of multiple principal uses existing at the site prior to any zoning restriction (the valid pre-existing nonconforming use of “multiple principal uses”) is well known and has been documented as part of past litigation and permitting relative to the Site. While some of the uses are allowed (i.e. Quarrying, Solar farm), others are pre-existing non-conforming principal uses (i.e. Retail Sales to Industrial and Commercial Buyers and General Services Establishment). Whereas a number of these uses are pre-existing non-conforming principal uses and whereas the existing operation of multiple uses on the Site is, in and of itself, a pre-existing non-conformity, my client is alternatively seeking a Special Permit to expand the existing non-conformance of multiple principal uses on the site to include an additional principal use (i.e. Light Manufacturing facility).

A “change or extension” of the pre-existing multiple principal uses on the 115-acre site can be granted if the change or extension is found by the Board to not be *substantially more detrimental* than the existing nonconforming use (multiple principal uses) to the neighborhood. The addition, change or extension of “multiple principal uses,” the pre-existing nonconforming use, is not *substantially more detrimental* where the proposed asphalt facility is a “light manufacturing” use by right on a 115-acre site in the IA zone. In the IA zone there can be a

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<sup>4</sup> “[T]he matter is remanded to the Board for further proceedings consistent with this decision.” (Decision, p. 1). “[I]t is the opinion of this court that the Project would be an ideal use of Locus, given its proximity to the Fletcher Quarry and Newport’s rock crushing facility, and based upon the overall industrial nature of the area. And, while Defendants’ concerns as to the noise impact and traffic impact of the Project are perfectly legitimate, Plaintiff has signaled a willingness to agree to build noise attenuation barriers and to stipulate to a maximum number of vehicle trips, which would appear to be a perfectly reasonable way to accommodate Defendants’ concerns. Any other issues as to compliance with the letter of the Bylaw would seem to be minor issues resolvable through variances. In sum, this dispute should have been resolved long before it came before this court. Yet, the parties’ inability or unwillingness to resolve their disputes has resulted in over four years of costly litigation, including two summary judgment motions, numerous other procedural motions, and a three-day trial – all of which might have been avoided.” (Decision, p. 33)

principal use per each 40,000 sq. ft. minimum lot size, see Bylaw Appendix C). The analysis for this alternative basis for grant of the Special Permit by the Board is the same under the six (6) criteria for issuance of a Special Permit – no substantial detriment caused by addition of the asphalt facility (See Exhibit A).

### **3. USE VARIANCE UNDER SECTION 9.2.2**

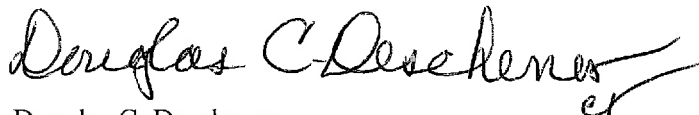
Pursuant to Section 9.2.2(2) of the Bylaw, the Board also has the power to grant dimensional and use variances. Pursuant to Section 3.1.1 of the Bylaw, "Not more than one principal use or structure shall be allowed on any lot, except as otherwise may be provided herein." In the event the Zoning Board of Appeals finds Sections 9.3 and/or 3.6.2 are not applicable in allowing an additional principal use on the Site, the Applicant hereby requests that the Zoning Board grant a use and or dimensional Variance from Section 3.1.1 of the Bylaw pursuant to Section 9.2.2(2) to allow for an additional principal use on the Site.

In Exhibit B, attached and incorporated herein, Newport presents the basis for the grant of a variance to allow the light manufacturing facility, a "use by right", as an additional principal use on the 115-acre site.

We look forward to working with the Board toward approval of this application, and ending what has been an expensive and unnecessary expense for Newport and the Town of Westford (see footnote 3 above). Enclosed, please find an application for the Special Permit and Variance being requested as well as all required supporting materials, filing fees and advertising fees. Kindly schedule this matter in accordance with the schedule dictated in the attached decision.

Thank you for your time and consideration in this matter. The Applicant reserves the right to further supplement or modify this filing. Please contact me should you require any further information.

Sincerely,  
Deschenes & Farrell, P.C.

  
Douglas C. Deschenes

Enclosures.

## EXHIBIT A

### Special Permit Criteria:

Granting of the Special Permit will not cause substantial detriment to the neighborhood or the town, taking into account the characteristics of the Site and the proposal in relation to the Site. As previously stated, the Site is located in the Industrial A zoning district and the proposed additional principal use is an allowed use in the district. Furthermore, the Site encompasses over 110 acres and has historically contained multiple principal uses some of which are allowed by right and others that are preexisting non-conforming. The Site abuts heavy industrial uses and has no direct residential abutters. All operations on the Site, including the proposed Light Manufacturing facility are set significantly back from the Site access (Route 40), such that all operation are barely perceptible to abutters and motorists passing the site.

In reviewing the possible impacts to the neighborhood and the town, please consider the following:

The proposal will serve social, economic and community needs. The additional principal use will provide increased tax revenue, employment opportunities and local access to products which are utilized in public and private development and improvement projects. The proposal will provide for safe traffic flow including parking and loading. The proposed use meets or exceeds the traffic and loading requirements under the applicable Bylaws. My clients, pursuant to the above reference court proceedings have agreed to limit the daily truck traffic generated by the Light Manufacturing facility in order to conform to safe traffic standards established by the Town of Westford's Traffic consultants.

There are adequate utilities and public services available to the site as sufficient water, electricity, sanitary services, telephone and data lines, and roadways are readily available to serve the Site. This is evidenced by the fact that the multiple existing uses on the Site are currently adequately served and the proposed use will not require any additional utilities or public services.

The proposed use is consistent with the neighborhood character and social structures. The proposed Light Manufacturing facility is an "allowed by right" use in the IA zoning district. The abutting properties all contain light and heavy industrial and commercial uses. All of the existing uses on the Site are consistent with those surrounding uses. There are no direct residential abutters. Furthermore, as previously stated, the Site encompasses over 110 acres and has historically contained multiple principal uses some of which are allowed by right and others that are preexisting non-conforming. There is more than ample room on the Site for the additional use.

The proposed additional principal use will not be detrimental on the natural environment. The proposed location for the Light Manufacturing facility has been radically disturbed from its natural condition as it was previously part of the quarry operation existing on the site for over 100 years. It is essentially completely devoid of any natural vegetation. The ground has been excavated and filled numerous times. As proposed, the facility will meet or exceed all local and state wetland regulations. Furthermore, extensive health risk, storm water management, traffic, sound, and air quality studies of the proposed facility as part of the Planning Boards review have

determined that the facility will not pose a health risk to the surrounding environment or those living in the surrounding area.

The Light Manufacturing facility will result in an increased property value for the Site and so an increased tax base for the Town which will generate additional tax revenue to the Town. Furthermore, the facility will generate new employment opportunities not only at the facility but also within the industry utilizing the products produced. The availability of the products produced will also generate increased business opportunities and possibly cost savings within the construction industry thus adding to the overall health and growth of the local economy. While the proposed facility will provide some additional demand on local services, (i.e. police, fire, roadways), given the existing uses on the Site and the safety of the facility as a “state-of-the art” manufacturing facility, this increased demand will be de minimis and certainly offset by the positive fiscal impacts generated.

In summary, the proposed additional principal use and the allowance of an additional principal use on the Site will not cause “substantial detriment to the neighborhood or town” (emphasis added). Therefore, granting of the Special Permit is justified.

## **EXHIBIT B**

### **Variance Criteria:**

The Site is clearly unique as to its soils, shape and topography which creates hardship relative to the utilization of the site for its intended and allowed purposes. The site is very large, encompassing over 110 acres yet has a relatively small amount of road frontage and only a single access point. The location of hydric soils and wetlands on and about the Site severely limit the access to the Site and impact the location of uses within the Site. Given the historic quarrying operations on the Site, a majority of the soils on the Site have been dramatically altered by way of excavation and filling activities. These activities have also resulted in significant topography changes (i.e. pits to piles) and alterations to natural contours. The Site is also a "split lot" whereby it is bisected by a town line (i.e. Westford/Chelmsford) creating shape hardship relative to each Town's area, setback and use regulations. Overall, the unique nature of the Site creates hardships relative to the allowed and practical uses of the Site.

The unique soil conditions, shape and topography of the Site do not generally affect the zoning district in which it is located. While the abutting Fletcher quarry may share some of the unique qualities of the Site, they were in fact originally part of the same parcel. However unique conditions of the Site are not generally shared among the IA zoned areas of Westford. I do not believe any other split lot IA zoned parcels exist. The majority of Industrial A land in Westford does not share these conditions, they are unique to the Site.

A literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the petitioner. Denial of the Variance will result in a financial hardship to the Applicant due its inability to utilize such a large parcel for its intended and allowed purposes. The site has historically had multiple principle uses. This is not unusual or unreasonable given the size of the Site. In fact, many commercial sites in the Town of Westford (most of which are smaller than the Site), contain multiple principal uses on a single lot. Moreover, it is true that multiple principal uses on single lots have been allowed and continue to be approved by the Planning Board without requiring a variance. Denial of the Variance in this instance would create a financial hardship to the Applicant who has and continues to pay real estate taxes based on the allowed uses on the property and has a large parcel of land which can more than reasonably support multiple uses.

The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw. It has been determined through the Planning Board review of the proposed use and in the subsequent appeals (see attached decision), that the proposed Light Manufacturing facility will not constitute a public health or safety hazard. Furthermore, as discussed above, the use will provide public benefits in terms of employment opportunities, added tax base and revenue. In fact, throughout the Planning Board and appeal processes no substantial detriment associated with the proposed use was determined to exist.

Regarding the intent of the Bylaw, it can be reasonably assumed that the purpose and intent of the prohibition of multiple uses on a lot is to protect public health, safety and welfare by providing for adequate space for uses and that adequate services and utilities are available to



those uses. In the Industrial A Zone a parcel must be a minimum of 40,000 square feet in size. It is therefore reasonable to expect that no more than one principle use would be allowed on a parcel meeting or just exceeding the minimum requirement. However, in the instant case, not only has no substantial detriment been identified but the site exceeds the minimum lot size requirement by over 100 times. Clearly, it can be shown that sufficient area exists for multiple uses. It has also been shown that adequate services and utilities are available to the site for multiple uses. Therefore the relief can be granted without derogating from the purpose and intent of the Bylaw.



TOWN OF WESTFORD  
ZONING BOARD OF APPEALS  
55 Main Street  
Westford, Massachusetts 01886  
TEL (978) 692-5524 FAX (978) 399-2558

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Special Permit - ZBA 1501

Date: December 31, 2014

Pursuant to the provisions of Section 9.3 \* and Section 9.3 of the Zoning Bylaw, the undersigned hereby makes application for a Special Permit for the premises located at 540 Groton Road in the following respect extension of a pre-existing non-conforming use (i.e., multiple principal uses on single lot).

Said premises are located within a IA District, a District in which the above requested use is only allowed with the granting of a Special Permit. Therefore, a hearing before the Town of Westford Zoning Board of Appeals is requested at its next meeting.

The reasons for the above request are as follows: Special Permit for multiple principal uses on a site pursuant to Section 3.1 of the Bylaw. This application is in conformance with the remand from Land Court in the matter of Newport Materials, LLC and 540 Groton Road, LLC vs. Michael Green, et al.

FEE: \$200.00

OWNER OF PROPERTY: 540 Groton Road, LLC and Newport Materials, LLC

MAILING ADDRESS: 164 Burke Street, Nashua, NH 03060

PHONE AT WORK: 1-603-882-1700

HOME: \_\_\_\_\_

SIGNATURE OF OWNER: \_\_\_\_\_

PETITIONER (if other than owner): \_\_\_\_\_

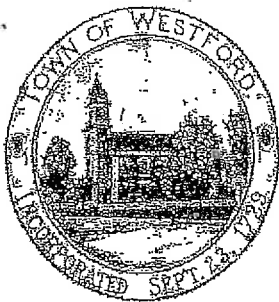
MAILING ADDRESS: \_\_\_\_\_

PHONE AT WORK: \_\_\_\_\_

HOME: \_\_\_\_\_

SIGNATURE OF PETITIONER: \_\_\_\_\_

\* and any other permit relief as may be required under the Westford Zoning Bylaw to allow the proposed use.



TOWN OF WESTFORD  
ZONING BOARD OF APPEALS

55 Main Street  
Westford, Massachusetts 01886  
TEL (978) 692-5524 FAX (978) 399-2558

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WESTFORD

Special Permit - ZBA 1502

Date: December 31, 2014

Pursuant to the provisions of Section 3.6.2\* and Section 9.3 of the Zoning Bylaw, the undersigned hereby makes application for a Special Permit for the premises located at 540 Groton Road in the following respect Extension of a pre-existing non-conforming use (i.e., multiple principal uses on single lot)

Said premises are located within a IA District, a District in which the above requested use is only allowed with the granting of a Special Permit. Therefore, a hearing before the Town of Westford Zoning Board of Appeals is requested at its next meeting.

The reasons for the above request are as follows: For the extension of a pre-existing non-conforming use on the property to allow for an additional principal use where multiple principal uses currently exist. This application is in conformance with the remand from Land Court in the matter of Newport Materials, LLC and 540 Groton Road, LLC vs. Michael Green, et al.

FEE: \$200.00

OWNER OF PROPERTY: 540 Groton Road, LLC and Newport Materials, LLC

MAILING ADDRESS: 164 Burke St., Nashua, NH 03060

PHONE AT WORK: \_\_\_\_\_ HOME: \_\_\_\_\_

SIGNATURE OF OWNER: \_\_\_\_\_

PETITIONER (if other than owner): Richard A. DeFelice

MAILING ADDRESS: 164 Burke St., Nashua, NH 03060

PHONE AT WORK: \_\_\_\_\_ HOME: \_\_\_\_\_

SIGNATURE OF PETITIONER: \_\_\_\_\_

\* and any other permit relief as may be required under the Westford Zoning By-Law to allow the proposed use/project.



TOWN OF WESTFORD  
ZONING BOARD OF APPEALS

55 Main Street  
Westford, Massachusetts 01886  
TEL (978) 692-5524 FAX (978) 399-1251

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JAN 5 2015  
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WESTFORD

Variance - ZBA 1503

Date: December 31, 2014

Pursuant to the provisions of Section 9.2.2 of the Zoning Bylaw, the undersigned hereby petitions your Board for a Variance from the terms of Section 3.1.1\* which will allow the construction or addition to the dwelling or building located at: 540 Groton Road

The proposed construction will include: To allow an additional principal use on the lot.  
This application is in conformance with the remand from Land Court in the matter of Newport Materials, LLC and 540 Groton Road, LLC vs. Michael Green, et al.

It is the opinion of the petitioner that unless relief is granted by your Board, substantial hardship, as defined in Section 9.2.2-(2) will result. A hearing is therefore requested at your next Board Meeting.

FEE: \$200.00 ZONING DISTRICT: IA

Is your project subject to review by other Westford Boards/Committees?

If yes, please identify \_\_\_\_\_

Owner of Property: 540 Groton Road, LLC and Newport Materials, LLC

Mailing Address: 164 Burke St., Nashua, NH 03060

Phone: Work: \_\_\_\_\_ Home: \_\_\_\_\_

Signature of Owner(s): [Signature]

Petitioner (If other than owner): Richard A. DeFelice

Mailing Address: 164 Burke St., Nashua, NH 03060

Phone at Work: \_\_\_\_\_ Home: \_\_\_\_\_

Signature of Petitioner: [Signature]

\* and any other permit relief as may be required under the Westford Zoning By-Law to allow the proposed use/project.

SEAL

COMMONWEALTH OF MASSACHUSETTS  
Land Court  
Department of the Trial Court  
10 MISC 429867 (AHS)

NEWPORT MATERIALS, LLC, and 540 GROTON ROAD, LLC,  
Plaintiffs,  
vs.

MICHAEL GREEN, ANDREA PERANER SWEET, FREDERICK PALMER, DENNIS  
GALVIN and KEVIN BORSELLI, in their capacity as members of the PLANNING BOARD OF  
THE TOWN OF WESTFORD, and not individually, and the TOWN OF WESTFORD,  
Defendants.

**DECISION**

This case involves a dispute between plaintiffs Newport Materials, LLC ("Newport") and 540 Groton Road, LLC ("Groton") (together, "Plaintiffs") and defendants Members of the Planning Board of the Town of Westford (the "Board") and the Town of Westford ("Westford" or the "Town") (together, "Defendants") regarding the Board's denial of Newport's applications for approval of a plan to develop an asphalt manufacturing facility on industrial property owned by Groton and leased to Newport. The issues in this case have been extensively briefed by the parties, both pre- and post-trial, and the court has had the benefit of expert testimony submitted by both parties. After considering the evidence adduced at trial, as well as the filings of the parties, it is the decision of this court that the Board's denials of Plaintiffs' applications are upheld -- albeit for reasons different than those stated in said denial decisions -- and the matter is remanded to the Board for further proceedings consistent with this decision.

**Procedural History**

Plaintiffs filed their unverified complaint on May 18, 2010, by which they (a) appealed, pursuant to G. L. c. 40A, § 17, the decision of the Board to deny two special permits and a site plan review in connection with Newport's proposed development of an asphalt manufacturing facility (the

“Project”) at Locus (defined below);<sup>1</sup> (b) sought a judicial determination, pursuant to G. L. c. 240, § 14A, with respect to certain provisions of the Town of Westford Zoning Bylaw (the “Bylaw”) relative to the definitions of “light manufacturing” uses and MCPs; and (c) sought a declaratory judgment, pursuant to G. L. c. 231A, as to whether the Project constituted a “light manufacturing” use and/or an MCP.<sup>2</sup> A case management conference was held on June 30, 2010. Defendants filed their Answer to First Amended Complaint on July 13, 2010. On July 29, 2010, would-be intervenors Michael Donnelly, Marie Burnham and John Pecora filed a motion to intervene in this case, which was denied by Order dated August 12, 2010.

Plaintiffs filed their Motion for Partial Summary Judgment on September 13, 2010, together with a supporting memorandum, a statement of material facts, and appendices containing Affidavits of Marc J. Goldstein, Esq., Brian C. Levey, Esq., Douglas C. Deschenes, Esq., Christopher M. Lorrain, P.E., and Richard A. DeFelice (Newport’s principal). On October 28, 2010, Defendants filed their opposition to Plaintiff’s summary judgment motion, together with a supporting memorandum, a statement of additional facts, and an appendix, which contained Affidavits of Robert J. Michaud, P.E., and Matthew Hakala (the Town’s Building Commissioner). Plaintiffs filed their reply brief on November 8, 2010, together with Affidavits of James E. Winn, P.E., John G. MacLellan III (the principal of an abutter to Newport), and a Supplemental Affidavit of Richard A. DeFelice.

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<sup>1</sup> Specifically, on April 20, 2010, the Board issued decisions denying Newport’s proposed site plan for the Project (the “Site Plan Review Decision”), Newport’s application for a major commercial project (“MCP”) special permit, and Newport’s application for a Water Resource Protection Overlay District (“WRPOD”) special permit.

<sup>2</sup> Plaintiffs filed their First Amended Complaint on June 16, 2010. Pursuant thereto, Plaintiff’s Count IV was amended to include “[t]he LLC is entitled to a determination of the validity of §§ 9.3A, 10.2 and Appendix A, Table of Principal Use Regulations of the Bylaw, and/or the extent to which §§ 9.3A, 10.2 and Appendix A, Table of Principal Use Regulations of the Bylaw, affect the Project; to wit, the requirement of these provisions of the Bylaw that all commercial or industrial uses permitted by-right obtain a MCP Special Permit is invalid and/or the Project does not require a MCP Special Permit.” Count V was amended to include “[a]n actual controversy exists between Newport and the Planning Board regarding whether §§ 9.3A, 10.2 and Appendix A, Table of Principal Use Regulations of the Bylaw are lawful and/or Newport is required to seek and obtain a MCP Special Permit for the Project. Newport contends that the requirement of these provisions of the Bylaw that all commercial or industrial uses permitted by-right obtain a MCP Special Permit is unlawful and/or the Project does not require a MCP Special Permit and the Planning Board disagrees.”

Also on November 8, 2010, Plaintiffs filed a motion to strike portions of the Affidavit of Robert J. Michaud, P.E. On November 30, 2010, Defendants filed their opposition to this motion to strike, as well as a supplemental memorandum in opposition to Plaintiff's summary judgment motion and Supplemental Affidavit of Robert J. Michaud, P.E.

A hearing on both motions was held on December 1, 2010, and the matters were taken under advisement. On December 10, 2010, Plaintiffs filed a reply to Defendants' November 8, 2010 supplemental submissions, together with a second supplemental Affidavit of Richard A. DeFelice. Subsequently, both parties filed a number of letters (on December 13 and 22, 2010, and on January 3, 2011) with this court, by which they attempted to clarify their supplemental submissions.

On August 15, 2011, the court issued a decision on Plaintiffs' motion for summary judgment ("Land Court Decision 1"), (a) finding that the Board had the authority to determine whether the proposed use of Locus (defined below) was an as of right use, (b) finding that G. L. c. 40A, § 4 invalidated Section 10.2 of the Bylaw (pertaining to special permits for MCPs), (c) remanding to the Board the issue of whether the Board properly denied Newport's WRPOD special permit application, and (d) attempting to clarify the issue of whether the Project was a "light manufacturing" use.<sup>3</sup>

Following Land Court Decision 1, on October 14, 2011, the parties filed a joint stipulation, in which they stipulated (a) that only Section 10.2(d) of the Bylaw (defining MCPs) was invalidated, (b) that no issues would be remanded to the Board at that time, and (c) that Plaintiffs would be allowed to file a second amendment to their complaint.<sup>4</sup>

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<sup>3</sup> The court's decision did not remand the Board's denial of Newport's MCP special permit application because it invalidated Section 10.2 of the Bylaw (pertaining to the definition of MCPs), and therefore found it unnecessary to determine the merits of that denial.

<sup>4</sup> Specifically, Paragraph 3 of the parties' joint stipulation stated:

The parties stipulate and agree that in light of the Court's Rule 56 Decision there is no need to remand to the Westford Planning Board any of its decisions regarding Newport Materials on either Site Plan Review, WRPOD Special Permit or MCP Special Permit and the case should proceed to discovery and trial provided, however, that

Plaintiffs filed their Second Amended Complaint on October 14, 2011, in which they (a) argued that the Project (in addition to qualifying as an of right "light manufacturing" use) also qualified under Section 10.2 of the Bylaw as "quarrying [and] mining", (b) challenged the validity of a portion of the Bylaw's definition of "light manufacturing" and the construction of that definition, and (c) contested the validity of the thresholds use in the Bylaw to trigger the requirement to apply for an MCP special permit. The parties thereafter filed a Stipulation of Dismissal of Counts VI and VII of the Second Amended Complaint (dealing with the "light manufacturing" definition's Prohibition Clause -- defined below) on November 13, 2012.<sup>5</sup> On November 30, 2011, Defendants filed their Answer to Second Amended Complaint.

At a status conference held on January 25, 2013, the parties could not resolve their differences as to whether a trial or summary judgment hearing was necessary to resolve the remaining issues. Defendants filed a motion for summary judgment on April 22, 2013, together with a supporting memorandum, statement of material facts, and the Affidavit of Dr. K. Wayne Lee, P.E. On May 2, 2013, Defendants filed the Affidavit of Robert J. Michaud, P.E. On May 17, 2013, Plaintiffs filed their opposition to Defendants' motion for summary judgment, together with a supporting memorandum, statement of additional facts, and an appendix. At a status conference on May 28, 2013, the court determined that a trial would be necessary, since many facts remained in dispute. As such, in anticipation of trial, the parties filed a joint pre-trial memorandum dated August

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- a. No party is agreeing in advance to the scope or extent of discovery.
  - b. No party is foreclosed from filing a dispositive motion at any point with respect to the Second Amended Complaint except as may be limited by the Court . . . ; and
  - c. No party is waiving any argument that it may have with respect to the appropriate remedy in the event the court overturns any portion of any of the Planning Board's decisions.

<sup>5</sup> Counts VI and VII had requested a judicial determination and declaratory judgment that the Prohibition Clause (defined below) -- which prohibited "any light manufacturing business, the conduct of which may be detrimental to the health, safety or welfare of persons working in or living near the proposed location of such manufacturing, including, without limiting the generality of the foregoing, special danger of fire or explosion, pollution of waterways, corrosive or toxic fumes, gas, smoke, soot, dust or foul odors and offensive noise and vibrations" -- was void for vagueness or otherwise unsupported by any rational basis, and should be invalidated.



23, 2013, in which they reached an agreement as to some of the disputed facts, and agreed to the dismissal of Counts XII and XIII of Plaintiff's Second Amended Complaint, which had attacked the validity of section 10.2 of the Bylaw defining MCP special permit thresholds.<sup>6</sup>

A pre-trial conference was held on August 27, 2013. On October 17, 2013, Plaintiffs filed their Omnibus Motion in Limine and Defendants filed four motions in limine. A hearing on all motions in limine was held on October 24, 2013, on which date the court denied Defendants' Motion in Limine to Exclude Testimony and Evidence Pertaining to the Off-site Measurement of Sound, denied Defendants' Motion in Limine to Exclude Non-binding Unenforceable Stipulations, and allowed Defendants' Motion in Limine to Exclude All Evidence Concerning the Concrete Plant

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<sup>6</sup> Following the parties' October 14, 2011 joint stipulation and their pre-trial memorandum, the following is the status of the Counts in Plaintiff's Second Amended Complaint:

- Count I: Appeal of Decisions (G.L. c. 40A, §17) (The Board's denials "exceeded the authority of the [Board] and were arbitrary and capricious and [sic] legally untenable.")
- Count II: Petition for Judicial Determination (G.L. c. 240, § 14A) (Plaintiffs are entitled to a "determination of . . . whether the Project is a 'Light Manufacturing' use allowed by right in the IA zoning district.")
- Count III: Declaratory Judgment (G. L. c. 231A, §§ 1-2) ("[T]he Project is a Light Manufacturing use under the Bylaw.")
- Count IV: Petition for Judicial Determination (G.L. c. 240, § 14A) (Plaintiffs are entitled to a "determination of . . . whether the Project is a '[q]uarrying [and] mining' use allowed by right in the IA zoning district.")
- Count V: Declaratory Judgment (G. L. c. 231A, §§ 1-2) ("[T]he Project is a "[q]uarrying [and] mining' ('the extraction of rock and the processing and finishing of the product hereof, rock crushing, lime kilns, lumbering') use under the Bylaw.")
- Count VI: Voluntarily dismissed
- Count VII: Voluntarily dismissed
- Count VIII: Petition for Judicial Determination (G.L. c. 240, § 14A) (Plaintiffs are entitled to a "determination of . . . whether the Prohibition Clause must be interpreted reasonably and in such a way that an applicant can understand its meaning including, but not limited to, reliance on recognized industry or regulatory standards.")
- Count IX: Declaratory Judgment (G. L. c. 231A, §§ 1-2) ("[T]he Light Manufacturing definition must be interpreted reasonably and in such a way that an applicant can understand its meaning including, but not limited to, reliance on recognized industry or regulatory standards.")
- Count X: Petition for Judicial Determination (G.L. c. 240, § 14A) (Plaintiffs are entitled to a "determination of [whether] the Project does not require a MCP Special Permit.")
- Count XI: Declaratory Judgment (G. L. c. 231A, §§ 1-2) ("[T]he Project does not require a MCP Special Permit.")
- Count XII: Voluntarily dismissed
- Count XIII: Voluntarily dismissed

Notably, Count VIII refers to "the Prohibition Clause". It appears that the intended reference here was actually the Bylaw's definition of "light manufacturing". The court interprets Count VIII as such for purposes of this Decision.

Located at 520 Groton Road.<sup>7</sup>

A site view and trial were held on November 4-6, 2013; the first day of trial was held at Middlesex County Superior Court in Woburn, Massachusetts, and the second and third days at the Land Court in Boston. Testimony at trial for Plaintiffs was given by Richard DeFelice (Newport's principal), Christopher M. Lorrain (civil engineer), John G. MacLellan, III (principal of the company that owns the Fletcher Quarry, defined below), Brion Koning (acoustic consultant), and James D. Fitzgerald (traffic engineer). Testimony for Defendants was given by Caroline I. Kluchman (the Town's Director of Land Use Management), James D. Barnes (civil engineer) and Robert J. Michaud (transportation engineer).<sup>8</sup> Sixty-five agreed-upon exhibits were submitted into evidence.

Post-trial briefs were filed on February 21, 2014, and Plaintiffs filed a supplemental post-trial brief in response to Defendants post-trial brief on March 24, 2014. Also on February 21, 2014, Defendants moved to strike portions of the Affidavit of Denis R. J. Roy ("Roy") and the exhibits annexed thereto. This motion is decided below.

Based on the pleadings, the evidence submitted at trial, the parties' pre- and post-trial filings, as well as the reasonable inferences drawn therefrom, I make the following findings of fact.

#### **The Properties at Issue**

1. Groton is the owner of a 115.52 acre parcel located at 540 Groton Road (the "Groton Parcel") located near the northeast corner of Westford, Massachusetts. The Groton Parcel is irregularly-shaped (resembling, roughly, a backwards C-shape wrapping around its neighbor to the

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<sup>7</sup> The court declined to rule on Defendants' Motion in Limine to Exclude Evidence or Argument Pertaining to the Planning Board Public Hearing Process, opting instead to make individual rulings at trial on the evidentiary issues implicated by that motion, based upon the parties' objections related to relevance and/or hearsay. The court, in general, excluded evidence relating to the public hearing process before the Board, except where such information was helpful in providing insight as to the background of the Project.

<sup>8</sup> The parties agreed to submit affidavits and deposition transcripts for expert witnesses Denis R. J. Roy (engineer), Kang-Won Wayne Lee (civil and environmental engineer), and Terry S. Szold (professor of urban studies and planning) in lieu of taking their testimony at trial.

west), and is bounded by Route 40 to the south, an operating quarry to the west, an industrial lot and Route 3 to the east, and vacant industrial land to the north. The eastern side of the Groton Parcel extends into the adjacent town of Chelmsford.

2. No land used for residential purposes directly abuts the Groton Parcel. Abutting the Groton Parcel to the west is a 163 acre property located at 534 Groton Road, which is the site of the Fletcher Quarry, a 300+ foot deep open rock quarry that is over 100 years old (the "Fletcher Quarry"). Current uses of the Groton Parcel include a large solar electric generation facility, an office building, a rock-crushing facility, and the storage of granite materials.

3. Newport is the lessee of approximately eight acres of the Groton Parcel (the "Newport Parcel"). The Newport Parcel is located near the middle of the Groton Parcel at its westerly boundary, directly abutting the Fletcher Quarry. Newport currently operates the above-noted rock-crushing facility on the Newport Parcel under a special permit to operate as a pre-existing non-conforming use, subject to certain conditions relating to traffic and hours of operation.

#### **The Project**

4. The Project is a proposed asphalt (also known as "bituminous concrete") plant to be located on an approximately two acre portion of the Newport Parcel ("Locus"), which would involve the installation and operation of an outdoors "skidded ultraplant" comprised of various industrial equipment, including a hot mix asphalt drum, a #2 fuel oil storage tank, a hot oil heater, various storage tanks and silos, a sixty-eight foot venting stack, conveyers, a process control center, and a materials processing yard. The Project would employ up to three employees and is intended to operate as a single shift operation running from 6:00 A.M. to 7:00 P.M., Monday through Saturday, with operations closed between December 15 and March 15 of each year. As proposed, the maximum potential production capacity of the Project would be 400 tons of finished asphalt per

hour, and 5,000 tons per diem; however, per the Massachusetts Department of Environmental Protection ("MassDEP") permit approval for the Project, output is limited to 60,000 tons per month and 300,000 tons per annum.

5. Materials needed for the Project to produce asphalt include aggregate (i.e., minerals, such as rock, gravel, and sand) and liquid bitumen, which are mixed to create asphalt (i.e., bituminous concrete). This mixture can be supplemented with crushed recycled asphalt product ("RAP"), which, pursuant to the MassDEP permit, can constitute up to 40% of the final product. Plaintiffs intend to obtain 50% or more of the needed aggregate from the adjacent Fletcher Quarry (via non-public roads between Locus and the Fletcher Quarry), but is under no contractual obligation to do so; the balance of the aggregate would come from off-site sources. Any RAP used would come from off-site.

6. Briefly stated, the proposed process for the production of the bituminous concrete at the Project is as follows: first, the necessary materials would be transported to the Project by truck; next, aggregate stored in bins would be deposited by conveyers into a mixer to be dried, heated, and then mixed with recycled dust and RAP; finally, liquid bitumen would be added to create the final product (bituminous concrete), which would be transported by conveyers into holding tanks for storage until dispensed into heavy-duty trucks for off-site distribution.

#### **Relevant Zoning Regulations**

7. Section 1.3 of the Bylaw states that the purpose of the Bylaw is:

to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land, to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the

prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the town, including consideration of the recommendations of the most recent Master Plan adopted by the Planning Board and the comprehensive plan, if any, of the regional planning agency; and to preserve and increase amenities by the promulgation of regulations to fulfill said objectives.

8. Section 9.3A.1(2) of the Bylaw provides, specifically with respect to noise (in the context of MCPs), that the goal of regulating the sound that a proposed use would generate is to “reduce noise pollution in order to preserve and enhance the natural and aesthetic qualities of the Town; preserve property values; and preserve neighborhood character.” Section 9.3A.4(2)(A) -- which establishes performance standards for MCPs -- specifically provides that such sound should be “measured at the property boundary of the receiving land use.”

9. Pursuant to Appendix A of the Bylaw, Locus is located in an Industrial A (“IA”) zoning district, in which “quarrying [and] mining” and “light manufacturing” (among other uses not relevant to this case) are allowed as of right. Section 10.2 of the Bylaw defines “quarrying [and] mining” as “the extraction of rock and the processing and finishing of the products hereof, rock crushing, lime kilns, [and] lumbering.” “[L]ight manufacturing” is defined as: “fabrication, assembly, processing or packaging operations employing only electric or other substantially noiseless and inoffensive motor power, utilizing hand labor or quiet machinery and process . . . .”<sup>9</sup> <sup>10</sup>An exception to the rule that light manufacturing is permitted of right in an IA zoning district is if the

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<sup>9</sup> The remainder of this provision sets forth an additional restriction prohibiting uses that are detrimental to health or safety (the “Prohibition Clause”). The parties have stipulated that the Project is not in violation of the Prohibition Clause.

<sup>10</sup> In order to analyze this provision, some of the terms contained therein must be defined. “Processing” is defined as “1. A series of actions, changes, or functions bringing about a result. . . . 2. A series of operations performed in the making or treatment of a product . . . .” AM. HERITAGE DICTIONARY (5th Ed. 2014) (*available at* <http://ahdictionary.com>). Defendants’ expert, Terry Szold, seemed to concede, in his testimony, that the Project would satisfy this definition. “Substantial” is defined as “[c]onsiderable in importance, value, degree, amount, or extent”. *Id.* “Noiseless” is defined as “[h]aving or making no noise”. *Id.* “Inoffensive” is defined as “[ ] Giving no offense; unobjectionable. [ ] Causing no harm; harmless.” *Id.* “Inoffensive” is defined as “[ ] Giving no offense; unobjectionable. [ ] Causing no harm; harmless.” *Id.* “Quiet” is defined as “[m]aking or characterized by little or no noise”. *Id.* “Noise” is defined as “[s]ound or a sound that is loud, unpleasant, unexpected, or undesired”. *Id.*

operation employs “not more than four employees”, in which case it would be prohibited.

10. For certain larger-scale commercial operations deemed to be MCPs, Section 9.3A of the Bylaw requires that a special permit be obtained; this requirement applies even if the use would otherwise be allowed of right in the relevant district. The purpose of this requirement is to protect surrounding properties from undesired or offensive effects of a proposed commercial operation (such as noise, odors, light, and traffic). Section 10.2 of the Bylaw defines a MCP as:

any industrial or commercial use which has one or more of the following characteristics: (a) 15,000 square feet or more of gross floor area in any building or combination of buildings; (b) more than 100 required parking spaces; (c) generation of more than 250 vehicle trips per day, as determined by the ITE’s Trip Generation Manual; (d) the use is allowed in the district in which it will be located.<sup>11</sup>

11. With respect to MCPs, Section 9.3A.4(2) of Bylaw states that “[n]o person shall operate or cause to be operated any source of sound in a manner that creates a sound level which exceeds 70 dBA or 10 dBA above ambient, whichever is lower, when measured at the property boundary of the receiving land use.”<sup>12</sup> However, pursuant to Section 9.3A.6 of the Bylaw, “[t]he Planning Board may . . . waive any of these performance standards where such waiver is not inconsistent with the public health and safety, and where such waiver does not undermine the purposes of this section and the proposed development will serve the goals and objectives set forth in Section 9.3A.1.”

12. Under Section 8.0 of the Bylaw, certain areas of the Town designated as WRPODs (including the area where Locus is situated) are subject to special restrictions related to protecting

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<sup>11</sup> As noted above, the parties have stipulated that requirement (d) of Section 10.2 is invalid.

<sup>12</sup> This 10 dBA above ambient standard (measured at property lines and nearby residences and/or other sensitive receptors, such as schools or hospitals) is echoed in MassDEP noise regulations. However, “[n]oise levels that exceed the criteria at the source’s property line do not necessarily result in a violation or a condition of air pollution . . . .” Thus, “[a] new noise source that would be located in an area that is not likely to be developed for residential use . . . or in a commercial or industrial area with no sensitive receptors may not be required to mitigate its noise impact . . . .”

the Town's supply of drinking water. Of relevance to the Project is Section 8.1.10 of the Bylaw, which requires a special permit for any use involving storage of fuel oil in a WRPOD, which was a proposed part of the Project.

13. Finally, pursuant to Section 3.1.1 of the Bylaw, "[n]ot more than one principal use or structure shall be allowed on any lot, except as otherwise may be provided herein." However, Section 9.3.1 of the Bylaw provides that a special permit for a variance from this restriction may be granted if "the proposed use or structure(s) shall [sic] not cause substantial detriment to the neighborhood or the town, taking into account the characteristics of the site and of the proposal in relation to that site."<sup>13</sup>

#### The Permit Application Process

14. In April of 2009, Newport filed applications with the Board for a site plan review and MCP and WRPOD special permits for the Project.<sup>14</sup> Between May of 2009 and April of 2010, the Board held twenty-one public hearings with respect to the Project, during which period Newport supplemented their filings to address the Board's concerns and requests for information. On April 20, 2010, the Board voted 4-1 to deny all three applications, primarily because "the Board [lacked] jurisdiction to approve the Site Plan based on a finding that the [Project] is not light manufacturing as defined in the [Bylaw] and the application therefore has no standing."

15. In the Site Plan Review Decision, the Board determined that the Project did not

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<sup>13</sup> Defendants argue that Section 3.1 of the Bylaw entails that a MCP special permit is required in order to operate multiple principal uses and/or structures on a single lot. On the way to this conclusion, Defendants appear to misconstrue Section 3.1.3 as creating a new use category for MCPs that is distinct from "primary uses". This construal is without support in any aspect of the Bylaw. Section 3.1.3 simply entails that a use that is characterizable as falling under multiple different use classifications is subject to the strictest permitting requirements applicable to any of the different classifications of which it is susceptible. Moreover, nowhere in the Bylaw's definition or discussion of MCPs is it stated (or even implied) that multiple primary uses on a single lot requires a MCP special permit. Rather, it would appear that all that is needed to conduct multiple primary uses is a simple variance. In this way the Board retains an inherent discretion to vary from its zoning ordinances.

<sup>14</sup> Around this time, Newport also applied for a plan approval from MassDEP, which was conditionally granted in September of 2009; a final modified conditional approval issued on April 7, 2011.

constitute light manufacturing because it would not be “substantially noiseless and/or inoffensive” as is required for the use to be ‘Light Manufacturing’.”<sup>15</sup> Specifically, the Site Plan Review Decision stated that Plaintiffs’ sound level evaluation report “did not take into account noise generated from the proposed truck traffic”, “did not provide sound level data from the nearest abutting property boundaries as required by the MassDEP”, did not include the impact of proposed “on-site heavy operating equipment”, and improperly incorporated unfounded noise attenuation data.<sup>16</sup> The Site Plan Review Decision further stated that the Project would be in violation of the Prohibition Clause (a claim that has since been withdrawn by agreement of the parties), that the Project would result in an unacceptable impact on local traffic, and that the Project would constitute “Heavy Manufacturing”. The Site Plan Review Decision made no reference to the Bylaw’s prohibition of light manufacturing operations employing “not more than four employees” in LA zoning districts.

#### Noise Data

16. Plaintiffs and Defendants each submitted expert evidence pertaining to the projected noise impact that the Project would have.<sup>17</sup> According to the parties’ experts, in order to determine

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<sup>15</sup> As discussed below, it is the determination of the court that the “substantially noiseless and inoffensive” requirement applies only to the power source of a proposed use. Neither party offered testimony specifically addressing the means by which the Project would be powered, nor as to the level of noise that any non-electrical motor power would generate. Both at trial and in their post-trial briefs, the parties focused not on determining whether the Project’s power source would be “substantially noiseless and inoffensive”, but rather whether the Project’s operations generally could be described as such. Based upon the Project plans, it appears that the majority of the equipment sought to be installed may be powered substantially (if not entirely) by electrical means, including, specifically, the conveyer belts, the materials recycler, the motor control center, the HVAC system, the exhaust system, and the fuel pump systems. The only systems that appear to generate power through non-electrical means are the gas and oil burners used to heat materials, and, with the exception of the (electrical) support components of these burners, there is no indication that the burners themselves are motorized. With specific respect to the asphalt heating systems, according to the Project plans, these systems are “designed to overcome . . . high noise levels associated with open air burners.”

<sup>16</sup> Plaintiffs’ sound level evaluation was conducted by Cavanaugh Tocci Associates, Inc. (“CTA”), and it included sound measurements at various residential and commercial receptors outside of the Groton Parcel; CTA’s report, which was submitted to the Board as part of Newport’s application for approval of the Project, is dated May 14, 2009, and was supplemented by three additional reports. CTA also submitted their findings to Mass DEP in connection with their application for a non-major comprehensive plan approval, which was eventually approved.

<sup>17</sup> Because of the technical nature of noise impact assessment, a brief precis on the basic concepts underlying same is appropriate. According to the parties’ expert witnesses, sound can be evaluated in terms of its power (i.e., a quantification of the amount of sonic energy produced by a noise source) or its pressure (i.e., the amount of sound perceived by a



the sound impact that a potential noise source will have, ambient sound level (i.e., a measurement of background sound levels without the potential noise source) is compared to the total future sound level (i.e., the projected noise level expected to be generated by the source plus the ambient sound level) at one or more measurement locations (referred to as "receptors").<sup>18</sup> Projections as to the expected future noise a proposed use would make are typically made by reference to actual measurements of similar uses in other locations. The experts testified that such an evaluation must also take into consideration unique features of the property in question that may result in sound attenuation (i.e., reduction), which can be caused by various sources, including air molecules (which results in the reduction of distant sounds, especially high frequency sounds), foliage, and any solid barriers between the noise source and the measurement site.

17. Because the level of noise fluctuates over time, the experts testified that sound measurements in any noise impact study must be taken for a sustained period of time. After so doing,

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listener). Since sound power is an "abstract" concept that is "impossible to measure" and does not pertain to sound perception, sound pressure is used to evaluate sound for noise analyses.

The unit by which sound pressure is most commonly evaluated is decibels A-weighted (dBA), the technical definition of which is "[t]he total sound level in decibels of all sound as measured with a sound level meter with a reference pressure of 20 micropascals using the 'A' weighted network scale at slow response." A PLANNER'S DICTIONARY (Michael Davidson & Fay Dolnick, Am. Planning Ass'n eds., 2004), p. 282 (*found at Aff't of Terry S. Szold, Ex. B*). Here, "A-weighting" refers to an emphasis of middle frequency sounds (and deemphasis of lower and higher frequency sounds), which is intended to represent how the human ear perceives sound at various frequencies.

The parties' expert witnesses agreed that increases in sound of 3 dBA are barely perceptible, increases of 5 dBA are noticeable, and increases of 10 dBA are perceived as roughly double in volume. See MS&G Lakeville Corp. v. Town of Lakeville, 2007 WL 1576141 (Mass. Land Ct. June 1, 2007).

The parties' expert witnesses also agreed that the human ear is sensitive to a broad band of frequencies of sound ranging from low frequency sounds (i.e., bass sounds) to middle frequency sounds (e.g., normal speech) to high frequency sounds (i.e., high pitch sounds, such as birds chirping). Defendants' expert witness plausibly testified that sounds at different frequencies have a different perceived character effect on the listener, so a noise source that does not substantially affect the total sound level could nonetheless be perceived as noticeably different from the ambient sound level if the noise was of a different sound frequency. However, Plaintiffs' expert witness testified that such a difference occurs only if the added sound is "significantly tonal", such as a siren or alarm.

<sup>18</sup> Plaintiffs' expert witness described the ambient sound level as "the relatively steady state sound level that exists in an environment . . . [or] the residual sound level that is near the minimum sound level that occurs during a particular time interval." The projected sound level of a proposed use is estimated using industry standards for sound generation from similar uses and applying sound attenuation based on the location of the measurement relative to the location of the project. Calculating the total sound level is not a matter of simply adding the dBA levels of the ambient sound and the estimated sound of the proposed use, but rather involves a "logarithmic addition" of the two sounds; as such, the total sound level may not be higher than the sound level of whichever sound was more dominant.

the level of the sound is deemed to be the level it was at (or above) 90% of the time, which is referred to as the “L90” standard. Notably, this court has previously found the L90 standard to be an acceptable standard for noise measurement, and it is also employed in MassDEP regulations. See MS&G Lakeville Corp., 2007 WL 1576141 at 5, n. 24. Plaintiffs’ and Defendants’ respective sound analysis experts each employed this method in their analyses.

18. The noise impact study conducted by Plaintiffs’ sound experts, CTA, measured sound levels at seven residential receptors and one commercial receptor outside of the Groton Parcel.<sup>19</sup> CTA’s findings were as follows:

**TABLE 1: CTA NOISE IMPACT ESTIMATES AT NEARBY RECEPTORS**

<u>Receptor Location</u>	<u>Ambient Sound Level</u>	<u>Total Future Sound Level</u>	<u>Increase</u>
263 Groton Road	43 dBA	45 dBA	+2 dBA
Scotty Hollow Road “E” Building Cluster	52 dBA	53 dBA	+1 dBA
Morrison Lane	45 dBA	46 dBA	+1 dBA
Sweet Wood Circle	45 dBA	47 dBA	+2 dBA
11 Russell’s Way	43 dBA	45 dBA	+2 dBA
27 Russell’s Way	43 dBA	44 dBA	+1 dBA
Danley Drive	43 dBA	45 dBA	+2 dBA
10 Commerce Way	55 dBA	62 dBA	+7 dBA

This data was then used by CTA to estimate sound levels at the north, south, east and west perimeter

<sup>19</sup> More specifically, the May 2009 CTA Report states that the following procedure was employed: “continuous sound monitoring of A-weighted sound levels (dBA) over a week-long duration and short term sampling (ten-minute time intervals) of sound at different frequencies, at multiple locations at/near residential properties around the project site.” Further, “[o]ur acoustical analysis of the asphalt plan is based on reference A-weighted (dBA) sound levels . . . provided by the principal asphalt plan equipment and systems manufacturer, together with our own database of octave band asphalt plan sound levels from previous studies . . . . The reference sound data for the proposed asphalt plant is based on sound measurements conducted at an existing asphalt plant that is of the same design equipment make-up, and production capacity as the asphalt plant proposed for the Westford site . . . .”

lines of the Groton Parcel (the “North Boundary Line”, “South Boundary Line”, “East Boundary Line” and “West Boundary Line”):

**TABLE 2: CTA NOISE IMPACT ESTIMATES AT THE BOUNDARY LINES<sup>20</sup>**

<u>Receptor Location</u>	<u>Ambient Sound Level</u>	<u>Total Future Sound Level</u>	<u>Increase</u>
Northern Boundary Line	45 dBA	45 dBA	0 dBA
Southern Boundary Line	43 dBA	46 dBA	+3 dBA
Eastern Boundary Line	43 dBA	60-65 dBA	+7-12 dBA
Western Boundary Line	43 dBA	65-70 dBA	+12-17 dBA

Plaintiffs’ expert witness classified sound levels of 45–46 dBA as “inaudible, indistinguishable from the existing ambient environment”, sound levels of 60-65 dBA as the “low end of conversational voice level”, and sound levels of 65-70 dBA as “roughly conversational voice level”.

19. Defendants also commissioned a noise impact study, which was conducted by Acentech Inc. (“Acentech”), a sound engineering consultancy firm.<sup>21</sup> Acentech’s study included measurement of ambient sound levels at four points along the boundaries of the Groton Parcel, with total future sound levels “based on the sound power levels provided by [CTA’s study] and . . . the same factors that [CTA] had used.” The results of Acentech’s study were as follows:

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<sup>20</sup> CTA’s estimates for the Eastern and Western Boundary Lines assumed that the noise attenuation barriers they recommended to be installed were in place. Specifically, “[T]ransportation-type” noise barrier walls can be strategically located and constructed at/near truck unloading areas, front end loader operations areas, at-grade compressor and fan locations, etc. The potential requirements for additional noise control measures could be evaluated following plant construction and . . . [further measures] could be installed without major reconstruction/alteration/shutdown of the plant.” These noise attenuation measures were not incorporated into the plans for the Project.

<sup>21</sup> Defendants conducted their own noise impact study because they objected to the methodology of CTA’s sound impact study on several bases. First, Defendants claim that CTA’s study did not adequately take into account increases in specific frequencies within the overall sound environment. Next, Defendants objected to CTA’s assumption of sound attenuation barriers that were not included in the plans for the Project that were submitted to the Board. Defendants’ expert witness further noted that CTA’s study assumed the absolute upper limit of noise attenuation that a barrier could realistically provide without enclosing the proposed noise source. Finally, Defendants objected to the fact that Plaintiffs’ study did not include actual measurements from places along the Groton Parcel’s boundaries, but rather made estimates of sound levels on the boundaries based on measurements taken elsewhere.

**TABLE 3: ACENTECH NOISE IMPACT MEASUREMENTS AT NEARBY RECEPTORS<sup>22</sup>**

<u>Receptor Location</u>	<u>Ambient Sound Level</u>	<u>Total Future Sound Level</u>	<u>Increase</u>
263 Groton Road	49 dBA	50 dBA	+1 dBA
Scotty Hollow Road "E" Building Cluster	56 dBA	57 dBA	+1 dBA
19 Morrison Lane	41 dBA	42 dBA	+1 dBA
31 Russell's Way	36 dBA	40 dBA	+4 dBA

Acentech used the data they and CTA collected to estimate the future noise impact of the Project at the boundaries of the Groton Parcel. Their analysis at the West Boundary Line included projections both with and without attenuation measures taken. The following were Acentech's findings:

**TABLE 4: ACENTECH NOISE IMPACT ESTIMATES AT THE BOUNDARY LINES<sup>23</sup>**

<u>Receptor Location</u>	<u>Ambient Sound Level<sup>24</sup></u>	<u>Total Future Sound Level</u>	<u>Increase</u>
North Boundary Line	45 dBA	48 dBA	+3 dBA
South Boundary Line	43 dBA	48 dBA	+5 dBA
East Boundary Line	43 dBA	51 dBA	+9 dBA
West Boundary Line	43 dBA	56 dBA (with barriers); 75 dBA (without barriers)	+13 dBA (with barriers); +32 dBA (without barriers)

<sup>22</sup> Acentech found lower ambient sound levels than were estimated by CTA at the second two locations, but higher ambient sound levels for the first two. The total sound impacts on these locations, as found by Acentech, differed from those estimated by CTA only by 2 dBA or less -- a negligible amount that both parties' experts would agree is below the threshold even of a barely perceivable sound increase.

<sup>23</sup> The Acentech study also included projections of the sound impact on the nearby office building at 10 Commerce Way (ambient sound level of 55 dBA and total future sound level of 62 dBA) and an internal location on the Groton Parcel where Groton had proposed to subdivide the Groton Parcel (ambient sound level of 43 dBA and total future sound level of 59 dBA). In addition, Acentech provided a frequency band analysis of the projected sound, which showed a greater increase at lower frequencies (63, 125, and 250 hertz).

<sup>24</sup> Despite their objections as to the methodology of CTA's study, Acentech's study itself does not appear to have included measurements of sound at the boundary lines of the Groton Parcel. In addition, Acentech's report ultimately utilized CTA's estimated ambient sound levels. It is unclear why neither CTA nor Acentech conducted measurements directly at the boundary lines of Groton Parcel rather than relying on estimates drawn from other receptors.

### Traffic Data

20. As part of the materials submitted in support of the Project, Newport submitted the results of a traffic study conducted by Greenman-Pedersen, Inc. ("GPI"), which analyzed the expected impact the Project would have on local traffic. According to GPI's traffic analysis, the Project would result in approximately 100 vehicles accessing Locus every day, resulting in approximately 199-203 trips (defined as every coming or going from Locus via public roads) per diem. This total is reached as follows:

**TABLE 5: PLAINTIFFS' TRAFFIC IMPACT PROJECTIONS**

<u>Reason for Access</u>	<u>Number of Vehicles/Trips</u>
Importing aggregate to Locus	18 (36 trips)
Importing RAP to Locus	13 (26 trips)
Importing fuel and bitumen to Locus	3 (6 trips)
Employees, visitors, and deliveries	3-5 (6-10 trips)
Exporting asphalt from Locus	63 (~125 trips)

These projections are based on a number of stated assumptions, including:

- (a) that aggregate would comprise 75% of the asphalt produced, that 50% of this aggregate would come from the Fletcher Quarry via non-public quarry roads (which were not considered in calculating trips), and that all aggregate from offsite locations would be delivered in 32-ton capacity vehicles operating at 100% capacity;<sup>25</sup>
- (b) that RAP would comprise 25% of the asphalt produced, which would be delivered in 30-ton capacity vehicles

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<sup>25</sup> Defendants argue that the fact that Newport may import some of the aggregate for the Project from the Fletcher's Quarry is speculative and irrelevant, since Plaintiff is under no obligation to import aggregate from Fletcher's Quarry. Even if they were under such an obligation, Defendants continue, the calculation of trips (for purposes of determining whether the requirement to apply for a MCP special permit) must include all trips to and from Locus -- including those from the Fletcher's Quarry on non-public roads.

operating at 100% capacity;<sup>26</sup>

- (c) that the maximum output of the Project would be 1,500 tons of asphalt per diem, which would be delivered in 24-ton capacity vehicles operating at 100% capacity;<sup>27</sup> and,
- (d) Plaintiff's stated willingness to stipulate that the Project will not be permitted to generate more than 250 trips per diem.<sup>28</sup>

21. Defendants also submitted expert evidence as to the potential traffic impact of the Project. Defendants' expert testified that an accurate traffic impact study must take into consideration such variables as employee trips, visitors, deliveries, weather, economics, and seasonality. Defendants' traffic expert also testified that the size and capacity of import/export trucks, as well as the reasonableness of expecting such trucks to carry loads at full capacity, are additional relevant factors in assessing the potential traffic impact of a proposed use.

22. Defendants' traffic expert testified that if Plaintiffs' above-noted assumptions as to the sourcing of aggregate, overall production, and importation of RAP were removed, the total average number of trips could range anywhere from 260 to 444 trips per diem, and that peak traffic could range from around 400 trips per diem and up.

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<sup>26</sup> Defendants argue that Plaintiffs are not obligated to limit their RAP usage to 25% of finished product, and that the relevant measurement of potential RAP traffic should be based upon the MassDEP-permitted RAP level of up to 40%.

<sup>27</sup> Defendants claim that Newport is under no obligation to limit the maximum output of the Project to 1,500 tons per diem -- a figure, they argue, that is based only on Plaintiffs' stated willingness to stipulate to such a limit. Rather, they argue, the relevant potential output of the Project is, at minimum, the average maximum daily capacity of 2,300-2,500 permitted by MassDEP, or, at maximum, the theoretical maximum output of the Project of 5,000 tons per diem.

<sup>28</sup> Defendants dismiss Plaintiffs' willingness to so stipulate as "self-serving", which suggests that Defendants -- for reasons not brought to the court's attention -- are themselves not willing to stipulate to this as a condition of any approval of the Project. Defs. Post-Trial Br., p. 68. Although, as discussed below, Plaintiffs' willingness to stipulate to a maximum number of vehicle trips is not relevant for purposes of determining whether an MCP permit is required, it is quite obviously relevant to the issue of whether such a permit should be approved upon remand. As Plaintiffs point out in their post-trial brief, a stipulated maximum number of trips can easily be made a condition of an MCP permit. Thus, while the issue of whether or not to grant an MCP permit subject to such a condition is not presently before the court, it is the opinion of this court that it would be unreasonable for the Board, upon remand of this matter, to ignore Plaintiffs' stated willingness to stipulate as to the maximum number of vehicle trips associated with the Project in determining whether to approve an MCP permit for the Project.

### Defendants' Motion to Strike

Before resolving the merits of this case, the court must rule on Defendants' February 21, 2014 motion to strike a portion of Roy's affidavit. In their opposition to the motion, Plaintiffs concede that the portions of Roy's affidavit concerning the concrete plant located at 520 Groton Road are inadmissible pursuant to this Court's order dated October 24, 2013. The court concurs. Thus, Defendants' motion is allowed to the extent that paragraphs 2, 6, 14, 18, and 20, and exhibits 7, 8, 10, 11, 12, 13, 21, 22, 23, 24, 25, 26, and 27 of Roy's affidavit (plus page 5, ¶ 2; page 6, ¶ 3; and page 7, ¶ 1 of Roy's interrogatory answer) are stricken. In addition, paragraphs 5 and 16 (and Exhibit 14) of Roy's affidavit (which deal with his opinion as to whether extraction of rock could occur at Locus) is irrelevant, since Plaintiffs' application to the Board does not propose any such operation. This inadmissible testimony is therefore stricken. Finally, exhibits 6, 7, 8, 20, 31, and 42 to Roy's affidavit constitute inadmissible hearsay, and are also stricken.

### Standard of Review on Appeal

In an appeal filed under G.L. c. 40A, § 17, the court's review of the facts at issue and determinations of the Board is de novo; as such, the findings and determination of the Board are accorded no evidentiary value. E.g., Josephs v. Bd. of App. of Brookline, 362 Mass. 290, 295 (1972). Nonetheless, the court's review is "circumscribed: the decision of the [Board] cannot be disturbed unless it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary." Roberts v. Sw. Bell Mobile Sys., Inc., 429 Mass. 478, 486 (1999) (quotations omitted); see also Britton v. Zoning Bd. of App. Of Gloucester, 59 Mass. App. Ct. 68, 73 (Mass. App. Ct. 2003) ("a highly deferential bow [is due] to local control over community planning").

In sum, the court's task is "to ascertain whether the reasons given by the [Board to disallow the Project] had a substantial basis in fact, or were . . . mere pretexts for arbitrary action or veils for

reasons not related to the purposes of the zoning law.” Vazza Props., Inc. v. City Council of Woburn, 1 Mass. App. Ct. 308, 312 (Mass. App. Ct. 1973); see also Britton, 59 Mass. App. Ct. at 74-75 (the local board’s decision must be supported by a rational view of the facts).

#### Use of Locus

In determining whether the Board’s denials of Plaintiff’s site plan review, MCP, and WRPOD applications were “arbitrary and capricious”, and in order to issue the judicial determinations on the questions of statutory construction raised by Plaintiffs, the court must consider three primary issues. First, the court must determine whether the Project constitutes a “quarrying [and] mining” operation. As discussed below, the court finds that it does not. Next, the court must determine whether the Project constitutes a “light manufacturing” operation. This inquiry requires an assessment of the parties’ expert evidence as to the expected noise impact of the Project. And, as discussed below, the court finds that the Project, in its present form, does not constitute light manufacturing, but that if revised plans were submitted to include noise attenuation barriers, it would likely so qualify.<sup>29</sup> Finally, the court must determine whether the requirement to apply for a MCP special permit (or any other special permit) applies to the Project. As discussed below, the court finds that this requirement does apply.

Standard rules of statutory construction dictate that plain, unambiguous language must be interpreted by the courts “in accordance with the usual and natural meaning of the words.” Gillette Co. v. Comm’r of Rev., 425 Mass 670, 674 (1997) (quotations omitted); see also Comm’w v. DeBella, 442 Mass 683, 687 (2004) (“When the ordinary meaning of words yield a workable and logical result, there is no need to resort to extrinsic aids’ in interpreting the statute.” (quotations

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<sup>29</sup> As discussed below, the plans for the Project must also be revised so as to comply with the requirement that it will employ at least five employees. Alternatively, the site plan review application could be amended to include a request for a variance from this requirement of the Bylaw.



omitted)). Zoning bylaws in Massachusetts “must be reasonably construed”, and “should not be so interpreted as to cause absurd or unreasonable results when the language is susceptible of a sensible meaning.” Green v. Bd. of App. of Norwood, 358 Mass 253, 258 (1970). In so doing, the courts also give “some measure of deference” to a planning board’s interpretation of its own bylaws. E.g., APT Asset Mgmt. v. Bd. of App. of Melrose, 50 Mass. App. Ct. 133, 138 (Mass. App. Ct. 2000).

**A. Use as of right as “quarrying [and] mining”**

Counts IV and V in Plaintiffs’ Second Amended Complaint seek a judicial determination and declaratory judgment that the Project constitutes a quarrying and mining operation and would therefore be allowed as of right at Locus. Plaintiffs argue that the Project constitutes quarrying and mining because at least half of the aggregate is intended to be extracted from the abutting Fletcher Quarry, and because the operation of the proposed asphalt plant will constitute the “processing and finishing” of rock products. However, Plaintiffs concede that, under the current Project design, no rock would be extracted from Locus itself.

Section 10.2 of the Bylaw, which defines “quarrying [and] mining”, requires both “extraction of rock” and the “processing and finishing” thereof; the conjunctive nature of this definition entails that both of these activities must occur for a use to fall under the definition. It is undeniable that the Project would entail “processing and finishing” of rock products; however, the “extraction” requirement is not met. Plaintiffs’ suggested construal of this term would permit processing and finishing of rock products extracted from any source under the this definition, which would effectively read the words “extraction of rock” out of the Bylaw entirely.

Plaintiffs’ argument that they meet the “extraction” requirement because their current plan is to have 50% of the aggregate extracted from the Fletcher Quarry is unavailing. First, the extraction of aggregate by a third-party from a different parcel (irrespective of how near it may be to Locus)

owned by a different entity is entirely irrelevant to the determination of whether the Project itself would include extraction of aggregate. Moreover, because Newport is under no obligation to purchase their aggregate from the Fletcher Quarry, there is nothing preventing them from changing the source of the materials being processed. As a result, I find that the Project does not constitute “quarrying [and] mining” under Section 10.2 of the Bylaw.

**B. Use as of right as “light manufacturing”**

Counts II and III in Plaintiffs’ Second Amended Complaint seek a judicial determination and declaratory judgment that the Project qualifies as an of right use as a light manufacturing operation in the IA zoning district in which Locus is located. Counts VIII and IX further request a judicial determination and declaratory judgement that the meaning of the term “light manufacturing” “must be interpreted reasonably and in such a way that an applicant can understand its meaning” by taking into consideration, among other things, “recognized industry or regulatory standards”.<sup>30</sup>

Since the parties have agreed that the Project would not violate the Prohibition Clause of Section 10.2, the only issues here are (a) whether the Project would employ more than four employees, and (b) whether the Project would constitute “fabrication, assembly, processing or packaging operations employing only electric or other substantially noiseless and inoffensive motor power, utilizing hand labor or quiet machinery and processes . . . .”

It is immediately apparent that, even if the Project were found to constitute “light manufacturing”, as it is presently proposed, it would nonetheless not be allowed of right at Locus because, pursuant to the Bylaw, light manufacturing employing four or fewer employees is not permitted of right in IA zoning districts. As testified to by the principal of Newport, the Project would employ only three employees. Thus, as presently conceived, the Project is not an of right

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<sup>30</sup> Count 8 actually refers to “the Prohibition Clause”, not to the definition of “light manufacturing”; this appears to be a mere scrivener’s error, which the court will disregard.

use.<sup>31</sup>

Because the Project would not be allowed as of right even if found to constitute light manufacturing, the court need not proceed any further on the question of whether the Project would be permitted as of right as a light manufacturing operation. Nonetheless, it will be instructive to the parties to opine on whether that definition is applicable to the Project.

The Bylaw's definition of "light manufacturing" is somewhat vague and contains several fact-specific qualifiers (i.e., "substantially", "noiseless", "inoffensive", and "quiet") that are not defined or elaborated upon in the Bylaw. When the ordinary meanings of the terms of the Bylaw are defined, we can arrive at a perfectly workable and logical result. Thus, it does not appear that it is necessary to look beyond the text of Section 10.2 of the Bylaw to determine how the term "light manufacturing" should be applied. As such, while the Bylaw obviously must be interpreted "reasonably and in such a way that [Plaintiffs] can understand its meaning," there is no reason to turn to "recognized industry or regulatory standards" for insight into such meaning.

When we parse the Bylaw's definition of "light manufacturing", we find three distinct

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<sup>31</sup> Plaintiffs, in their reply to Defendants' post-trial brief, argue that Defendants should be barred from addressing this issue because it was not discussed in the parties' joint pre-trial memorandum. This argument is unavailing. Plaintiffs had ample notice that this would be an issue in this case, given that it was raised in the pleadings, in Land Court Decision 1, and at trial.

Plaintiffs further contend that the requirement that a project employ not fewer than five employees to qualify in the IA district is arbitrary and unreasonable. They may very well be correct. Indeed, this court can think of no reason why a zoning ordinance would permit large-scale manufacturing operations but forbid small-scale manufacturing operations. Specifically delineating a subclass of light manufacturing employing four or fewer employees would seem to make sense only if the intent were to permit the opposite arrangement: allowing only small scale manufacturing in, for example, areas at close proximity to residential areas. Moreover, the phrasing of this requirement in the negative as "not more than four employees" seems to support this rationale for differentiating light manufacturing operations based on their size.

The nonsensicality of this application of the Bylaw notwithstanding, the law is on the books, so this court must apply it. If Plaintiffs believe this aspect of the Bylaw to be arbitrary and unreasonable, their recourse is to challenge it under G.L. c. 240 §14A or G.L. c. 231A. While Plaintiffs, in their Second Amended Complaint, sought a judicial determination and a declaratory judgment as to the interpretation and application of the term "light manufacturing", the pleadings do not request the same relief with respect to the reasonableness of the Bylaw's prohibition of light manufacturing operations operating with fewer than five employees in IA zoning districts. This issue was not briefed by the parties or addressed at trial. In fact, Plaintiffs first raised the issue in their post-trial brief.

As an alternative to filing a judicial challenge to this aspect of the Bylaw, Newport can easily remedy this defect on remand to the Board by simply revising the site plans for the Project so that five or more employees will be employed.

elements that the Project must contain in order to be reasonably classified as such. Namely, it must (a) constitute “fabrication, assembly, processing or packaging operations”, (b) it must “employ[ ] only electric or other substantially noiseless and inoffensive motor power”, and (c) it must utiliz[e] hand labor or quiet machinery and processes”.

1. **“[F]abrication, assembly, processing or packaging operations”**

Although arguments could be made that the Project will constitute fabrication or assembly, the most obvious route to a determination that the Project satisfies this requirement is through “processing”, which, as noted above, Defendants’ expert, Terry Szold, seemed to concede was applicable to the Project. I find that the Project will constitute “processing”, and therefore meets the first requirement of the Bylaw’s definition of “light manufacturing”.

2. **“[E]lectric or other substantially noiseless and inoffensive motor power”**

On its face, the scope of this provision is very narrow: it pertains only to the means by which a proposed use is powered -- not to the proposed use considered as a whole. Thus, “substantially noiseless and inoffensive” are requirements only of the Project’s power source. Further, the use of the word “other” here implies that electric power qualifies as “substantially noiseless and inoffensive”. These descriptors would therefore only apply to some form of non-electrical “motor power” -- such as a gasoline-powered generator.

As noted above, neither party specifically addressed the issue of the Project’s power source and whether it could be described as “substantially noiseless and inoffensive”. Rather, they focused instead on whether the Project’s operations generally could be described as such. As such, the court was required to consider this issue without the assistance of relevant expert testimony or briefing.

Based upon the court’s cursory review of the Project plans, it appears that the majority of the equipment sought to be installed will be powered substantially (if not entirely) by electrical means.

At first blush, then, it would appear likely that this requirement will be satisfied by the Project. However, because Plaintiffs did not address this issue through the testimony of their expert witnesses and did not provide briefing of this issue, the court is presently unable to conclude that Plaintiffs have satisfied their burden of demonstrating that the Project would be powered solely by electric power, or that any non-electrical motor power would be substantially noiseless and inoffensive.<sup>32</sup>

### 3. “[H]and labor or quiet machinery and processes”

The record is clear that the Project will employ no hand labor (other than the prospective employees’ operation of the equipment proposed to be constructed). Thus, we must determine whether the “machinery and processes” to be operated as part of the Project would “[m]ak[e] or [be] characterized by little or no” “sound that is loud, unpleasant, unexpected, or undesired”.<sup>33</sup> Notably, this does not mean that the Project must generate little or no sound, full stop; rather, such sound must not be so harmful as to constitute noise.

The Bylaw is entirely silent as to the definition of “quiet” and how the concept of “noise” is to be assessed in determining whether a use would constitute light manufacturing. Thus, the court

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<sup>32</sup> On remand to the Board, Plaintiffs should address this issue, and the Board’s determination of whether the Project satisfies this requirement shall be governed by the court’s interpretation of the phrase “[E]lectric or other substantially noiseless and inoffensive motor power”. The court further reminds Defendants that, to the extent that the Project will include non-electrical motor power sources, the requirement that such sources be “substantially noiseless and inoffensive” does not require that they be completely silent. So long as the sound generated by any such power sources (when considered in the context of the Project, Locus, and the surrounding properties) would not rise to the level of “noise” (as discussed below), it would be reasonable. Moreover, if the sound generated by the Project as a whole would not rise to the level of “noise”, the mere fact that any non-electric motor power sources could be deemed not to be “substantially noiseless and inoffensive” would not be a reasonable basis upon which to deny approval of the Project.

<sup>33</sup> As noted above, both parties’ analyses of the noise impact of the Project were couched not in terms of whether the Project would be “quiet”, but rather whether it would be “substantially noiseless and inoffensive” -- a requirement that the court has determined is applicable only to the power source of a prospective use. The fact that the Bylaw employs two different descriptors creates two different standards by which two different aspects of a proposed use are to be measured. I conclude that the “quiet” standard is less stringent than the “substantially noiseless and inoffensive” standard. The “substantially noiseless and inoffensive” standard, on its face, would seem to be an almost impossible standard to meet if applied to a proposed use considered as a whole, and would certainly run afoul of the requirement that bylaws be interpreted and applied reasonably. *See Green*, 358 Mass. at 258. Thus, to the extent that the Board’s operating procedure is to apply the “substantially noiseless and inoffensive” requirement to proposed uses considered as a whole, they misapply the Bylaw.

interprets this term in the general context of the provisions of the Bylaw, and with reference to relevant standards and practices of the MassDEP. The most relevant provision of the Bylaw is Section 9.3A.4(2)(A) of the Bylaw (which pertains specifically to MCPs, and not to "light manufacturing" uses), which prohibits uses that create a sound level exceeding the lower of 70 dBA or 10 dBA above the ambient sound level, measured at the property boundaries of the receiving land use. This "10 dBA above ambient" standard is echoed by the MassDEP's noise policy, as is the recommended location of assessment.

I find that this standard set forth in Section 9.3A.4(2)(A) of the Bylaw is a reasonable one for determining whether, for purposes of satisfying the definition of "light manufacturing", the Project is expected to be quiet.<sup>34</sup> I further note that Section 9.3A.6 of the Bylaw permits these standards to be waived "where such waiver is not inconsistent with the public health and safety, and where such waiver does not undermine the purposes of this section and the proposed development will serve the goals and objectives set forth in Section 9.3A.1." MassDEP noise regulations likewise provide for such a waiver -- which is likely the reason why MassDEP approved the Project.

In order to determine whether the Project will be "quiet", I must first determine where prospective noise should be measured -- directly at the source of the sound (Locus), at the Boundary Lines, and/or at the location of the nearest residential receptor(s). As was the case with the definition of "quiet" itself, the Bylaw is silent on this question, so I must again look elsewhere for guidance. Section 9.3A.4(2)(A) of the Bylaw (which, as noted, pertains specifically to MCPs -- not to light manufacturing uses) provides that sound should be "measured at the property boundary of the receiving land use." This approach is supported by MassDEP's policy with respect to the evaluation

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<sup>34</sup> As a corollary, because Plaintiffs' expert witness plausibly testified that the Project is not expected to produce pure tones (such as sirens or alarms), I find that the overall measurement of sound pressure (measured in dBA) is an adequate means by which to assess the potential noise impact of the Project, and that analysis of individual frequencies of sound (as advocated by Defendants) is neither necessary nor relevant.

of noise, which calls for measurements to be taken “both at the source’s property line and at the nearest residence or other sensitive receptor (e.g., schools, hospitals) . . . .”

Succinctly stated, the purpose of the Bylaw, as stated in Section 1.3 thereof, is to strike an optimal balance between promoting the productive use of properties and protecting the surrounding environment from any possible ill effects that such uses may engender. With respect to noise, the Bylaw seeks to “reduce noise pollution in order to preserve and enhance the natural and aesthetic qualities of the Town; preserve property values; and preserve neighborhood character.”

In view of these provisions, it is clear that the Bylaw is not meant to prevent sounds that, although possibly harmful, are nonetheless deemed acceptable by the owners of a particular property, but rather to prevent such sounds from adversely affecting adjacent landowners. Therefore, the noise impact within the Groton Parcel (including at Locus itself) will not be considered.<sup>35</sup> Rather, the closest locations to Locus where a relevant adverse impact may be caused by the Project would be at the perimeters of the Groton Parcel, which the court deems to be the “property boundary of the receiving land use”.<sup>36</sup> In view of the purposes of the Bylaw and relevant MassDEP practices, the court further deems it relevant to consider the impacts of noise on the nearby residential properties.

Because Defendants’ noise impact study worked off of the ambient sound levels estimated in Plaintiffs’ sound analysis, the court finds that there is no dispute as to the ambient sound levels at the boundaries of the Groton Parcel. See Table 2 & Table 4, *supra*. As such, I find the

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<sup>35</sup> In view of the facts that (a) Groton, the owner of Locus and lessor of the Newport Parcel, has aligned its interests with those of Newport, and (b) there is no known objection of record from any other tenant or occupant at Locus, the court deems it unnecessary to consider the noise impact at the boundaries of the Newport Parcel, as the only difference doing so would make would be to measure the noise impact upon other areas of the Groton Parcel itself. With respect to the noise impact on Locus itself, the court notes, as an aside, that there are federal and state mechanisms in place to ensure that such noise is not harmful to employees.

<sup>36</sup> Defendants cite Groton’s prospective plans to subdivide a portion of the Groton Parcel and suggest that the boundary of this subdivision should be treated as a relevant receptor. This argument is unduly speculative, as it posits an imaginary future abutter, and imputes an objection to noise created by the Project. The record indicates that Groton currently owns the entirety of the Groton Parcel, and therefore the hypothetical sub-parcel is not a separate, adjacent property. Defendants’ sound analysis at the boundary of the subdivided area is therefore not relevant, and will not be considered.

determination that the ambient sound levels would be 43 dBA at the South, East, and West Boundary Lines, and 45 dBA at the North Boundary Line to be accurate.<sup>37</sup>

Because the Project, as proposed, does not include any barrier attenuation, the court finds that CTA's assumptions with respect to barrier attenuation are unjustified. See Table 1 & Table 2, *supra*. Thus, the court finds that the relevant measurements of potential noise impacts of the Project are those figures that do not include assumptions with respect to hypothetical noise barriers. See Table 4, *supra*. As such, the court finds Defendants' expert evidence as to total future sound levels to be credible and relevant, and finds Plaintiffs' evidence as to total future sound levels to be unreliable, since it takes into account unjustified assumptions with respect to barrier attenuation.

In view of the foregoing findings, the court makes the following factual determinations with respect to the total future sound levels at the Boundary Lines:

**TABLE 6: COURT'S FINDINGS ON THE EXPECTED NOISE IMPACT OF THE PROJECT**<sup>38</sup>

<u>Receptor Location</u>	<u>Ambient Sound Level</u>	<u>Total Future Sound Level</u>	<u>Increase</u>
North Boundary Line	45 dBA	48 dBA	+3 dBA
South Boundary Line	43 dBA	48 dBA	+5 dBA
East Boundary Line	43 dBA	51 dBA	+9 dBA
West Boundary Line	43 dBA	75 dBA	+32 dBA

With respect to nearby residential receptors -- which are located farther afield than the Boundary Lines, and should therefore be expected to experience a lessened noise impact due to distance attenuation -- the court accepts the findings of Acentech's study, and determines that the

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<sup>37</sup> The court notes, again, that these figures represent estimates, not direct measurements, which both parties' noise impact surveys employed.

<sup>38</sup> Having concluded that the relevant receptor locations are the North, South, East, and West Boundaries of the Groton Parcel, as well as nearby residential receptors, the court declines to make any rulings as to the sound impact on any other receptor location, including any location within the boundaries of the Groton Parcel.



nearest residential receptor to the west would experience an increase of 4 dBA (an increase slightly greater than “barely perceivable”), while the residential receptors to the north, south, and east would experience only negligible, unperceivable increases of 1 dBA. See Table 2.

Measured against the standards in place pursuant to Section 9.3A.4(2)(A) of the Bylaw and MassDEP noise regulations, we see that one of the relevant receptors (i.e., the West Boundary Line) is expected to experience an increase in total sound pressure of greater than 10 dBA above ambient to above 70 dBA. Barring a variance from the Board, therefore, the Project, as presently conceived (without noise attenuation barriers), would not constitute “quiet machinery and processes” for purposes of determining whether it qualifies as light manufacturing.<sup>39</sup> Accordingly, I find that, as presently conceived, the Project is not allowed as of right at Locus.<sup>40</sup> Based upon the foregoing, I further find that the Board’s denial of Plaintiffs’ site plan review (and MCP and WRPOD special permit applications) was not “arbitrary and capricious and legally untenable”.

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<sup>39</sup> As discussed above, both the Bylaw and MassDEP noise regulations permit variances from usual noise standards in appropriate cases. Here, the only relevant receptor where the sound level would rise to the level of “noise” is the Western Boundary, which abuts the Fletcher Quarry. To the best of the court’s knowledge, the operator of the Fletcher Quarry does not object to the Project. Given the industrial use of the Fletcher Quarry, it seems highly unlikely that the operator would even have the basis for an actionable objection. Moreover, the surrounding area is substantially industrial in nature, containing multiple concrete plants, the Fletcher Quarry, and other industrial and commercial uses – all of which are served by several already-busy state highways. There is no risk of this arrangement being disturbed, as covenants running with surrounding properties (which used to be part of the Fletcher Quarry parcel) restrict residential uses. In sum, it is difficult to imagine a more suitable location for the construction of an asphalt plant than where Plaintiffs propose to build it, nor a more economically optimal use of Locus than the processing of the products of the next-door quarry.

Nonetheless, it is not the province of this court to substitute its own judgment for that of the Board. Since the Project (without noise attenuation barriers) could not fairly be characterized as “quiet”, it would require a variance from the Board -- for which Plaintiffs have not applied. Under such circumstances, although the Board’s actions may not be the most reasonable course, the court cannot find that no “rational view of the facts” supports the Board’s decision. Britton, 59 Mass. App. Ct. at 75. This would not be the case if Plaintiffs’ proposals had included noise attenuation barriers.

<sup>40</sup> Based upon the court’s findings above as to the meaning of “quiet” for purposes of Section 10.2 of the Bylaw, on remand to the Board, if Plaintiffs submits revised plans for the Project that include (a) a commitment to employ five or more employees and (b) plausible means of noise attenuation such that the noise impact on the West Boundary Line would be 69 dBA or less, it is the opinion of this court that the Project would be allowed as of right at Locus, subject to the requirements (discussed below) as to obtaining MCP and WRPOD special permits, as well as a special permit to operate multiple principle uses at the Groton Parcel (which, the court expects, given the multiple uses already being conducted at the Groton Parcel, would be routinely granted). As discussed above, such a renewed application should also address the issue of whether the Project will include any non-electrical motorized power sources, and whether any such source would be “substantially noiseless and inoffensive”.

### C. Special permitting requirements

Because the court has found that the Project does not -- as presently conceived -- constitute light manufacturing that would be allowed as of right at Locus, it follows that the Board's denials of Newport's applications for MCP and WRPOD special permits (and the issue of whether Newport was required to file a MCP special permit application at all) are moot.<sup>41</sup> Nonetheless, since, as noted above, it appears that the Project would constitute light manufacturing if it were resubmitted with certain changes included, it would be instructive to opine on whether such application should also be accompanied by an application for a MCP special permit.

As discussed above, the parties agree that the Project would trigger the requirement to apply for an MCP special permit only if it would generate more than 250 vehicle trips per diem. Since there is no way to know what the actual traffic impact will be until the Project is up and running, the prospective impact must be estimated.

Plaintiffs' position here, in essence, is that it is possible that the total number of trips to and from Locus could stay below the MCP threshold, and that, in any event, they are willing to stipulate to keep the number of trips below 250 per diem. Defendants take the opposite position, and argue that it is not relevant whether the number of trips could possibly be less than 250 per diem or whether Plaintiffs are willing to stipulate to a maximum number of trips; rather, Defendants argue, for purposes of determining whether an MCP permit is required, the issue is whether it is possible that the number of trips could exceed 250 per diem. And, they claim, if certain assumptions made by Plaintiffs in their traffic study are eliminated, the possible traffic impact rises to the MCP special

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<sup>41</sup> Due to their initial determination that the Project was not a permitted use in the IA zoning district, the Board did not address the merits of the MCP or WRPOD special permit applications. With respect to their application for a MCP special permit, Plaintiffs not only attack the Board's determination that it did not have jurisdiction to issue a MCP special permit, they also seek a determination that the MCP requirements do not apply to the Project, and that they therefore did not actually need to file an application for the MCP special permit in the first place. Plaintiffs do not dispute the need for a WRPOD special permit; rather, they merely attack the Board's determination that it did not have jurisdiction to issue a WRPOD special permit.

permit threshold, thus triggering the requirement to apply for an MCP permit.

Under the optimal conditions that Plaintiffs' traffic study assumes, the number of trips generated by the Project could possibly remain below the MCP threshold. However, if any one of the number of variables in Plaintiff's assumptions were to change (such as, for example, if Plaintiff were to decide to use more than 25% RAP, or if smaller trucks were used), the total number of trips could very reasonably be expected to exceed this threshold.<sup>42</sup> Moreover, the Bylaw's specific incorporation of the standards of the "ITE Trip Generation Manual" means that Plaintiffs' estimates must include internal trips between Locus and the Fletcher Quarry.

In sum, having reviewed the expert evidence adduced by the parties, the court is convinced that the number of trips generated by the Project could possibly range from 260 to 444 per diem. As such, I find that the requirement to obtain an MCP permit for the Project was triggered.<sup>43</sup> I further find that the Board's denial of Plaintiffs' application for a MCP special permit was not "arbitrary and capricious and legally untenable", since such action was taken merely as a corollary to the Board's proper denial of Newport's site plan review application.<sup>44</sup>

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<sup>42</sup> In addition, Plaintiffs' estimates are problematic insofar as they depend upon self-imposed limits to the amount of finished product expected to be produced by the Project that are well below their maximum permitted output under their MassDEP permit. They also rely on non-existent commitments to purchase aggregate from the Fletcher Quarry, non-binding limits on the amount of RAP to be used, and unrealistic assumptions as to the number, size, capacity, and efficiency of vehicles making deliveries to and from Locus. The court makes no finding with respect to the impact of seasonality, whether Fletcher Materials would use its own finished asphalt product in its road works projects, and potential trips relating to employees or deliveries, as these factors are too speculative to be considered reliable evidence of the expected traffic impact of the Project.

<sup>43</sup> Therefore, if Plaintiffs were to resubmit their plans for the Project in a revised form in accordance with the court's instructions herein, their application should be accompanied by an application for a MCP special permit. At that point, Plaintiffs' assumptions and discounts as to the expected number of vehicle trips will become relevant. Likewise relevant at that stage will be Plaintiffs' offer to stipulate to a maximum number of vehicle trips, since the Board's approval of such a special permit could easily be conditioned so as to include this stipulation.

<sup>44</sup> The parties have not addressed the WRPOD special permit application on its merits. As with the Board's denial of Newport's MCP special permit, it appears that the Board denied Newport's WRPOD special permit application as a corollary to their proper denial of Newport's site plan review application. Thus, I decline to find that the Board's denial of Plaintiffs' application for a WRPOD special permit was "arbitrary and capricious and legally untenable".

\* \* \*

In conclusion, I find that the Project (as presently conceived) does not constitute quarrying and mining or light manufacturing, and is therefore not allowed as of right at Locus; as such, the Site Plan Review Decision was not "arbitrary and capricious and legally untenable". I further find that, because the Board properly denied Newport's site plan review, Newport's applications for MCP and WRPOD special permits became moot, so the Board's denial of these applications was proper. The Board's decisions to deny Newport's applications are therefore upheld -- albeit for reasons that, as discussed above, are different than those stated therein.

The case is remanded to the Board. Plaintiffs should resubmit to the Board a modified site plan review application (a) incorporating the sound attenuation barriers recommended by CTA, (b) providing that the Project will employ five or more employees, (c) requesting a variance to operate more than one principal use on the Groton Parcel, and (d) addressing the issue of the Project's power sources. Such a revised application must be also accompanied by revised applications for MCP and WRPOD special permits. If so submitted, it would appear to this court that the Project would then be permitted as of right as a light manufacturing use at Locus, subject to such conditions as the Board may reasonably require in order to approve Newport's special permit applications.

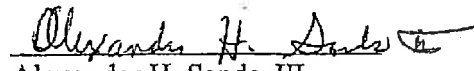
In the interest of avoiding future litigation before this court, the Board's assessment of any such resubmitted plans shall be made in accordance with the findings and rulings contained in this decision. The parties are strongly encouraged to maintain an active and open dialogue throughout the resubmission process in order to resolve any continuing dispute they have in such a way as to ensure that Locus can be most optimally used by Plaintiffs while also accommodating any legitimate

concerns Defendants may have as to the possible effects such use(s) may have.<sup>45</sup>

This court retains jurisdiction over this matter after it is remanded to the Board. Newport's revised site plan review application and MCP and WRPOD special permit applications shall be submitted to the Board (in accordance with the court's above instructions) within four weeks of the date of this Decision, and Newport shall promptly inform the court's sessions clerk when such filing is made. The Board's decisions on Newport's revised applications shall issue not later than four weeks after Newport's filing of same. The parties shall promptly notify the court as to the Board's remand decision and whether further proceedings before this court will be necessary to resolve the parties' dispute.

To the extent that the parties would like a status conference in order to discuss any of the foregoing, they should contact the court's sessions clerk to set up such a conference for Tuesday, January 6, 2015 at 10:00 A.M.

Final judgment in this matter will be held pending the Board's remand decision.

  
Alexander H. Sands, III  
Justice

Dated: December 8, 2014

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<sup>45</sup> As discussed above, it is the opinion of this court that the Project would be an ideal use of Locus, given its proximity to the Fletcher Quarry and Newport's rock crushing facility, and based upon the overall industrial nature of the area. And, while Defendants' concerns as to the noise impact and traffic impact of the Project are perfectly legitimate, Plaintiff has signaled a willingness to agree to build noise attenuation barriers and to stipulate to a maximum number of vehicle trips, which would appear to be a perfectly reasonable way to accommodate Defendants' concerns. Any other issues as to compliance with the letter of the Bylaw would seem to be minor issues resolvable through variances.

In sum, this dispute should have been resolved long before it came before this court. Yet, the parties' inability or unwillingness to resolve their disputes has resulted in over four years of costly litigation, including two summary judgment motions, numerous other procedural motions, and a three-day trial -- all of which might have been avoided.



December 19, 2014

Westford Zoning Board of Appeals  
Attn: Jeff Morrisette  
55 Main Street  
Westford, MA 01886

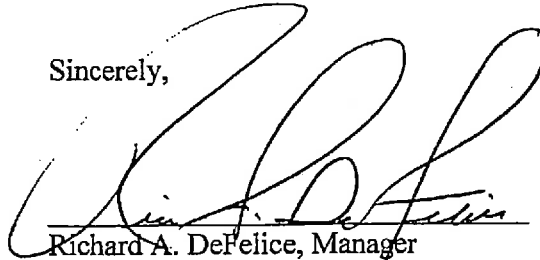
RE: 540 Groton Road

Dear Members of the Board,

Please be advised that the undersigned, Richard A. DeFelice, Manager of 540 Groton Road, LLC and Manager of Newport Materials, LLC does hereby authorize Attorneys Douglas C. Deschenes and/or related associates of the law firm of Deschenes & Farrell, P.C., 515 Groton Road, Westford, Massachusetts to act (including but not limited to signing, filing and permitting) in regards to any filing, permit application, or other documents relating to the above referenced project.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. DeFelice", written over a horizontal line.

Richard A. DeFelice, Manager  
540 Groton Road, LLC  
Newport Materials, LLC

5  
P

540 Groton Road, Westford and Chelmsford, MA

QUITCLAIM DEED

Modern Continental Construction Co., Inc., a Massachusetts corporation with an address at 175 Purchase Street, Boston, Massachusetts 02110, for consideration of \$2,700,000.00, grants to 540 Groton Road, LLC, a Massachusetts limited liability company, with an address at 85 Devonshire Street, Boston, Massachusetts 02109, with QUITCLAIM COVENANTS, the parcels of land described on Exhibit A attached hereto.

This conveyance is not a transfer of all or substantially all of the Grantor's Massachusetts assets.

Subject to and together with the benefit of all matters of record.

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2007 00025209

Bk: 21235 Pg: 250 Page: 1 of 4  
Recorded: 05/15/2007 10:09 AM

MASSACHUSETTS EXCISE TAX  
Middlesex North ROD #14 001  
Date: 05/15/2007 10:09 AM  
Ciri# 029871 30249 Doc# 00025209  
Fee: \$12,312.00 cons: \$2,700,000.00



Executed under seal this 14<sup>th</sup> day of May, 2007.

Modern Continental Construction Co., Inc.

By: [Signature]  
John H. Pastore, President and  
Assistant Treasurer

THE COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this day of 14<sup>th</sup> May, 2007, before me, the undersigned notary public, personally appeared John H. Pastore, proved to me through satisfactory evidence of identification, which was ☒ photographic identification with signature issued by a federal or state governmental agency, or ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose and that it was the free act and deed of Modern Continental Construction Co., Inc.

[Signature]  
Notary Public  
Print Name of Notary: Regina Marie Cali  
My commission expires: 10-13-2011

## EXHIBIT "A"

### Parcel One

The land together with any improvements thereon situated on the Northerly side of Groton Road (Route 40) in the Towns of Chelmsford and Westford, Middlesex County, Commonwealth of Massachusetts shown as Lot 1 on a plan of land entitled "Plan of Land in Chelmsford & Westford, MA" Groton Road, Scale 1" = 200' dated October 3, 2000, Prepared for F. G. Acquisition, L. L. C. c/o Fletcher Granite Quarry, 275 Groton Road, North Chelmsford, MA 01863 by Landtech Consultants, Inc. and recorded in Plan Book 205, Plan 53. Said Lot 1 contains 31.555 acres according to said plan.

Excepting and excluding from said Lot 1 so much thereof as is included within "Parcel D" shown on the plan recorded in Plan Book 209, Plan 86 as containing 2.81 acres. The remaining portion of said Lot 1 is shown as the "Revised Area" for Lot 1 containing 28.75 Acres as shown on the plan recorded in Plan Book 209, Plan 86.

### Parcel Two

The land together with any improvements thereon situated on the Northerly side of Groton Road (Route 40) in the Towns of Chelmsford and Westford, Middlesex County, Commonwealth of Massachusetts shown as Parcel A on a plan of land entitled "Plan of Land in Chelmsford & Westford, MA Groton Road, Scale 1" = 200' dated October 3, 2000, Prepared for F. G. Acquisition, L.L.C. c/o Fletcher Granite Quarry, 275 Groton Road, North Chelmsford, MA 01863 by LandTech Consultants, Inc. and recorded in Plan Book 205, Plan 53. Reference to said Plan is hereby made for a more particular description. Said Parcel A contains 35.435 acres according to said Plan.

### Parcel Three

The land together with any improvements thereon situated on the Northerly side of Groton Road (Route 40) in the Towns of Chelmsford and Westford, Middlesex County, Commonwealth of Massachusetts shown as Parcel B on a plan of land entitled "Plan of Land in Chelmsford & Westford, MA" Groton Road, Scale 1" = 200' dated October 3, 2000, Prepared for F. G. Acquisition, L.L.C. c/o Fletcher Granite Quarry, 275 Groton Road, North Chelmsford, MA 01863 by LandTech Consultants, Inc. and recorded in Plan Book 205 Plan 53. Reference to said Plan is hereby made for a more particular description. Said Parcel B contains 46.057 acres according to said Plan.

**Parcel Four**

The land together with any improvements thereon, situated on the Northerly side of Groton Road (Route 40) in the Town of Westford, Middlesex County, Commonwealth of Massachusetts shown as Parcel C on a plan of land entitled "Plan of Land in Westford, Massachusetts, GROTON ROAD, Property of Modern Continental Construction Co.", Scale 1" = 200' dated January 24, 2002 and recorded in Plan Book 209, Plan 86. Reference to said Plan is hereby made for a more particular description.

Said Parcel C contains 5.27 acres according to said plan.

For Grantor's title see the following deeds:

Parcel One: Book 11473, Page 64

Parcel Two: Book 12988, Page 278 and Book 13609 Page 188

Parcel Three: Book 14968, Page 162

Parcel Four: Book 13609, Page 188

END OF DOCUMENT





2012 00000179

Bk: 25597 Pg: 30 Page: 1 of 3  
Recorded: 01/03/2012 01:09 PM

MASSACHUSETTS EXCISE TAX  
Middlesex North ROD #14 001  
Date: 01/03/2012 01:09 PM  
Ctrl# 047604 08590 Doc# 00000179  
Fee: \$22.80 cons: \$5,000.00

Quitclaim Deed

Granite State Concrete Co., Inc., a New Hampshire corporation with a principal office located at 180 Phoenix Avenue, Lowell, Massachusetts 01852, in consideration of Five Thousand Dollars (\$5,000.00) paid in the form of the exchange of land with the Grantee, which exchange is to be evidenced by a deed from the Grantee to be recorded herewith, hereby grants to 540 Groton Road, LLC, a Massachusetts limited liability company ("Grantee"), with Quitclaim Covenants, the land in Westford, Massachusetts being described as Parcel 3 containing 39,882 square feet as shown on a plan entitled "Plan of land ANR, 540 Groton Road, LLC, 540 Groton Road, Westford, Massachusetts" dated July 19, 2011 revised through July 26, 2011 prepared by LandTech Consultants, which plan is to be recorded herewith.

Said Parcel 3 shall become part and parcel of 540 Groton Road, Westford, Massachusetts.

Said premises are conveyed subject easements, rights and restrictions of record, insofar as the same are now in force and applicable and to real estate taxes and other municipal liens not yet due and payable.

For title see deeds recorded with the Middlesex North District Registry of Deeds in Book 22812, Page 218 and Book 3590, Page 1.

The Grantor hereby certifies that this conveyance does not constitute all or substantially all of the assets of the Grantor in Massachusetts.

Property Address: 534 Groton Road, Westford, Massachusetts

Mailing Address of Grantee:

[signature page to follow]

Executed under seal as of this 29<sup>th</sup> day of November, 2011.

Granite State Concrete Co., Inc.

By: [Signature]

John G. MacLellan III, President and  
Treasurer

COMMONWEALTH OF MASSACHUSETTS

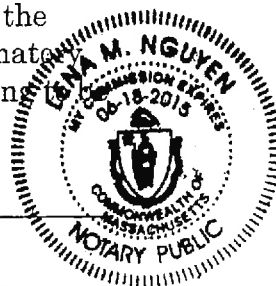
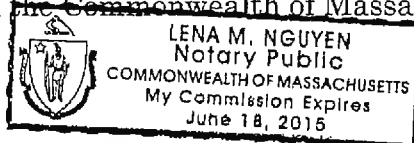
Middlesex, ss

On this 29<sup>th</sup> day of November, 2011, before me, the undersigned Notary Public, personally appeared the above-named John G. MacLellan proved to me by satisfactory evidence of identification, being (check whichever applies): ☒ driver's license or other state or federal governmental document bearing a photographic image; ☐ oath or affirmation of a credible witness known to me who knows the above signatory; or ☐ my own personal knowledge of the identity of the signatory to be the person whose name is signed above, and acknowledged the foregoing signed by him as his free act and deed, voluntarily for its stated purpose.

[Signature]  
Notary Public (print name)

My Commission Expires: \_\_\_\_\_

Qualified in the Commonwealth of Massachusetts





2012 00000182  
Bk: 25597 Pg: 88 Page: 1 of 2  
Recorded: 01/03/2012 01:09 PM

MASSACHUSETTS EXCISE TAX  
Middlesex North ROD #14 001  
Date: 01/03/2012 01:09 PM  
Ctrl# 047605 13945 Doc# 00000182  
Fee: \$22.80 cons: \$5,000.00

(space above this line reserved for the Registry of Deeds)

## QUITCLAIM DEED

540 Groton Road LLC, a duly organized and existing Massachusetts limited liability company with a business address of 540 Groton Road, Westford, MA 01886

In consideration of Five Thousand and No/100 (\$5,000.00) Dollars, paid in the form of the exchange of land with the Grantee, which exchange is to be evidenced by a deed from the Grantee to be recorded herewith,

Grants to Granite State Concrete Co., Inc., a duly organized New Hampshire Corporation with a principal office located at 180 Phoenix Avenue, Lowell, MA 01852

### with QUITCLAIM COVENANTS

Those 2 certain parcels of land, situated on Groton Road, but not adjacent thereto, in the Town of Westford, County of Middlesex and Commonwealth of Massachusetts, being shown as Parcel 1 and Parcel 2 on a plan of land entitled, "PLAN OF LAND - ANR 540 GROTON ROAD, LLC 540 Groton Road, Westford, MA Scale: 1" = 150' July 19, 2011" Prepared for 540 Groton Road, LLC 31 Milk Street, Suite 401, Boston, MA 02109, Prepared by LandTech Consultants, Engineering/Design/Surveying/Permitting 515 Groton Road, Westford, MA 01886, which plan is to be recorded herewith at the Middlesex North District Registry of Deeds.

Parcel 1 containing 27,904 square feet, more or less, according to said plan.

Parcel 2 containing 11,982 square feet, more or less, according to said plan.

Said Parcels 1 and 2 are to added to and become part and parcel of 534 Groton Road, Westford, MA.

540 GROTON ROAD WESTFORD

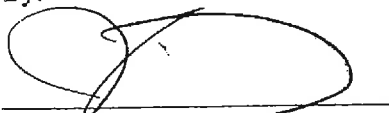
Being a portion of the premises conveyed to the Grantor hereinabove named, by deed of Modern Continental Construction Co., Inc., dated May 14, 2007 and recorded with said Middlesex North District Registry of Deeds at Book 21235, Page 250.

The Grantor hereby certifies that this conveyance does not constitute all or substantially all of the assets of the Grantor in Massachusetts.

WITNESS my hand and seal this 4 day of November, 2011.

540 Groton Road, LLC,

By:

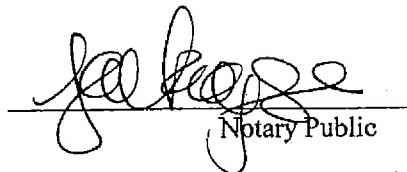
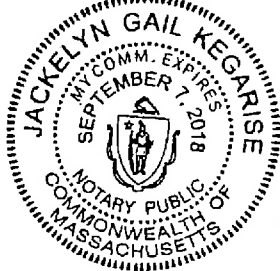


Jeffrey M. Johnston,  
Authorized Signatory

### COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On this 4 day of Nov., 2011, before me, the undersigned notary public, personally appeared Jeffrey M. Johnson, as aforesaid, proved to me through satisfactory evidence of identification, which was Driver's License to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
Notary Public

My Commission Expires: Sept. 7, 2018



## Unofficial Property Record Card - Westford, MA

### General Property Data

Parcel ID 048 0011 0248	Account Number 048
Prior Parcel ID -Z -	
Property Owner 540 GROTON RD, LLC CATHARTES PRIVATE INVESTMENTS	Property Location 20 COMMERCE WAY
Mailing Address 31 MILK ST SUITE 501	Property Use POTENTL-IND
	Most Recent Sale Date 5/15/2007
City BOSTON	Legal Reference 21235-250
Mailing State MA Zip 02109	Grantor MODERN CONTINENTAL CONSTRUCTIO,
ParcelZoning IA	Sale Price 2,700,000
	Land Area 19.530 acres

### Current Property Assessment

Card 1 Value	Building Value 0	Xtra Features Value 0	Land Value 356,600	Total Value 356,600
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### Building Description

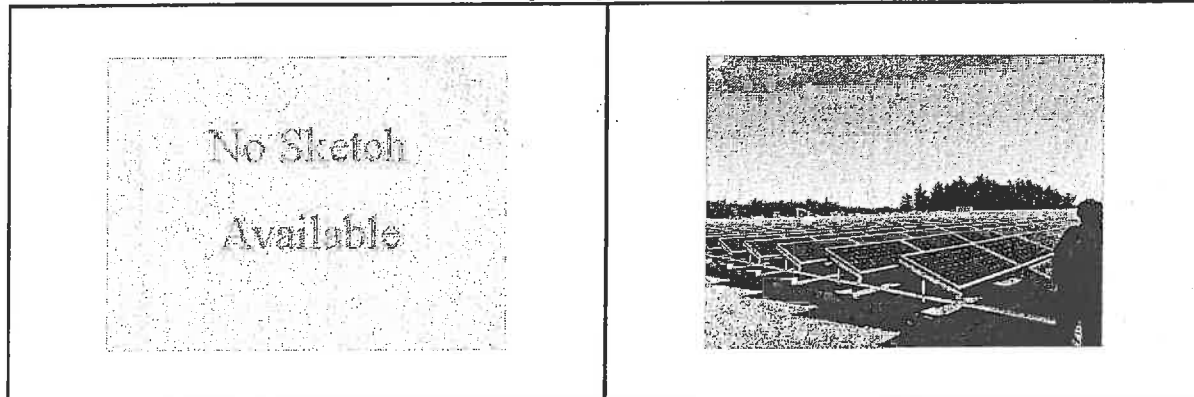
Building Style N/A	Foundation Type N/A	Flooring Type N/A
# of Living Units N/A	Frame Type N/A	Basement Floor N/A
Year Built N/A	Roof Structure N/A	Heating Type N/A
Building Grade N/A	Roof Cover N/A	Heating Fuel N/A
Building Condition N/A	Siding N/A	Air Conditioning 0%
Finished Area (SF) N/A	Interior Walls N/A	# of Bsmt Garages 0
Number Rooms 0	# of Bedrooms 0	# of Full Baths 0
# of 3/4 Baths 0	# of 1/2 Baths 0	# of Other Fixtures 0

### Legal Description

#### Narrative Description of Property

This property contains 19.530 acres of land mainly classified as POTENTL-IND with a(n) N/A style building, built about N/A , having N/A exterior and N/A roof cover, with N/A unit(s), 0 room(s), 0 bedroom(s), 0 bath(s), 0 half bath(s).

### Property Images



Disclaimer: This information is believed to be correct but is subject to change and is not warranted.



TOWN OF WESTFORD  
ZONING BOARD OF APPEALS

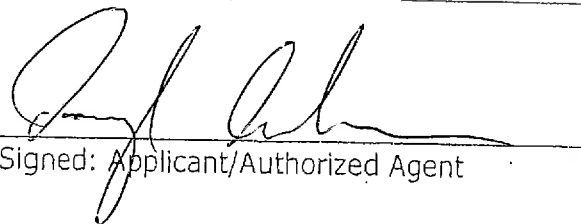
55 Main Street  
Westford, Massachusetts 01886  
TEL (978) 692-5524 FAX (978) 399-2558

**3<sup>rd</sup> Party Billing Form**

Date: \_\_\_\_\_

To: Beacon Community Newspapers  
Legal Notice Department

I hereby authorize the Beacon Community Newspapers to bill me directly for the legal notice to be published in the \_\_\_\_\_ on \_\_\_\_\_  
This legal notice pertains to a \_\_\_\_\_

  
Signed: Applicant/Authorized Agent

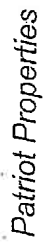
\_\_\_\_\_ Date

Print Name: 540 Groton Road, LLC

Address: Richard A. DeFelice, Mgr.  
164 Burke Street

Nashua, NH 03060

Phone: 978-496-1177 Douglas C. Deschenes



8:51:04AM

## Abutters List

300 FT ABUTTERS TO PARCEL 48-11.234

ParcelID	Location	Owner	Co-Owner	Mailing Address	City	State	Zip
046 0011 0246	GROTON RD	STONE RIDGE INVESTMENTS, LLC	C/O DUKE POINTER	50 DEER RUN	AYER	MA	01432
046 0013 0000	520 GROTON RD	POMERLEAU BROS INC	GRANITE STATE CONCRETE	520 GROTON RD	WESTFORD	MA	01886
046 0014 0000	534 GROTON RD	GRANITE STATE CONCRETE, CO I		180 PHOENIX AVE	LOWELL	MA	01852
046 0015 0000	535 GROTON RD	NESI REALTY, LLC		15 BRANCH PIKE	SMITHFIELD	RI	02917
046 0028 0001	0 OFF GROTON RD	LEEDBERG NORMAN W	LEEDBERG HELEN M	268 GROTON RD	NORTH CHELMSFORD	MA	01863
046 0028 0002	0 OFF GROTON RD	LEEDBERG SCOTT E	LEEDBERG JUNE A	266 GROTON RD	N CHELMSFORD	MA	01863
048 0001 0000	GROTON RD	LEMASURIER STEPHEN R	LEMASURIER ANDREW	P O BOX 71	N CHELMSFORD	MA	01863
048 0011 0234	10 COMMERCE WAY	540 GROTON RD, LLC	RICK DEFELICE	145 TEMPLE STREET	NASHUA	NH	03060
048 0011 0247	RUSSELL'S WAY	TOWN OF WESTFORD	CONSERVATION COMMISSION	55 MAIN STREET	WESTFORD	MA	01886
048 0011 0250	LOT 2 COMMERCE WAY	540 GROTON RD, LLC	CATHARTES PRIVATE INVE	31 MILK ST SUITE 501	BOSTON	MA	02109

End of Report

CERTIFIED

BOARD OF ASSESSORS  
55 MAIN STREET  
WESTFORD, MA 01886

*Signature* 12/17/2014

**BOARD OF ASSESSORS**

Elissa F. Magnant  
John J. Duffett  
Samuel P. Chase



**Chief Assessor**  
Frank T. Reen, M.A.A

**Assistant Assessor**  
Kathryn S. Bianchi, M.A.A

**Telephone:** (978) 250-5220  
**Fax:** (978) 250-5223

**Chelmsford Town Offices**  
**Assessor's Office**  
50 Billerica Rd  
Chelmsford, MA 01824-2777  
[www.townofchelmsford.us](http://www.townofchelmsford.us)

**Administrative Assistant**  
Nancy Maher

December 16, 2014

540 Groton Rd LLC  
Groton Rd Off  
10-22-1

c/o Deschenes & Farrell PC  
Douglas C Deschenes  
515 Groton Rd Ste 204  
Westford, Ma 01886

To the best of our knowledge the attached is a list of abutters for the above parcel.

Sincerely

Nancy L Maher

# ABBUTTERS LISTING CHELMSFORD, MA

Map	Block	Lot	Unit	Owner's Name	Co Owner's Name	Address	City	ST Zip	Parcel Location
11	4	12	1E	CARROLL GERALD F		E01 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E01
11	4	12	2E	MALLOY DIANE F		87A 13TH STREET	CHARLESTOWN	MA 02129-4204	SCOTTY HOLLOW DR #U-E02
11	4	12	3E	KORBEY KAY LOO TRUSTEE OF	THE KORBEY 1998 NOMINEE TR	E03 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E03
11	4	12	4E	MARKUNAS JANICE R TRUSTEE	JRM REALTY TRUST	E04 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E04
11	4	12	5E	SUM INVESTMENTS LLC		277 GROTON RD	WESTFORD	MA 01886	SCOTTY HOLLOW DR #U-E05
11	4	12	6E	SCHOOLEY MATTHEW &	MARIE SCHOOLEY	E06 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E06
11	4	12	7E	SULLIVAN JEANNE A		E07 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E07
11	4	12	8E	ZELLEY RICHARD C TRUSTEE	OF RICHARD C ZELLEY LIVING TR	PO BOX 122	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E08
11	4	12	9E	RODDY JOANA &	GERALYN RODDY	E09 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E09
11	4	12	10E	KRIEBBERG KENNETH TRUSTEE &	JENAN SHERMAN KRIEBBERG TRUSTEE	E10 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E10
11	4	12	11E	STARACE JOHN &	JOY STARACE	E11 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E11
11	4	12	12E	DICOSTANZO DEBORAH A		E12 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E12
11	4	12	13E	HART KARLEE		E13 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E13
11	4	12	14E	BOLDUC JIMMY G &	JUSTINE A BOLDUC	E14 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E14
11	4	12	15E	ACKER LEONARD W JR		E15 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E15
11	4	12	16E	MYERS LOUISE C		E16 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E16
11	4	12	17E	GRAND KAREN E		E17 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E17
11	4	12	18E	ORR DEBORAH L		E18 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E18
11	4	12	19E	STEEVES PATRICIA J &	GARY W CLARK	E19 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E19
11	4	12	20D	REINSON WILLIAM J		D20 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E20
11	4	12	20E	KEELAN NANCY N		D21 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E21
11	4	12	21D	GAVINENY USPA &		D22 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E22
11	4	12	21E	RACE ERIN A	SHANTI YARLAGADDA	139 FLAIN RD	WESTFORD	MA 01886	SCOTTY HOLLOW DR #U-E23
11	4	12	22D	NADEAU ERICA L &		D23 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E24
11	4	12	22E	MORAN THOMAS E TRUSTEE	TERESA GRECEK-NADEAU	D24 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E25
11	4	12	23D	JIANG TOM JYE-MING &	GERALD MORAN FAMILY TRUST	19 DENNISON RD	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E26
11	4	12	23E	CHIANG CAROL J	LIBBY JIANG	638 SOUTH STREET APT B	WALTHAM	MA 02453	SCOTTY HOLLOW DR #U-E27
11	4	12	24D	PAPPAS THERESA &	JUDE PAPPAS	E23 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E28
11	4	12	24E	MATZEIN HAROLD I &	JACLYN D MATZEIN	E24 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E29
11	4	12	25E	BARIL SUZANNE M		E25 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E30
11	4	12	26D	FREEDMAN SHEPXL B		D26 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E31
11	4	12	26E	SPELLISSY DORIS R		D27 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E32
11	4	12	27D	WHITS ORCA LLC	C/O RAJESH MAHEY	106 DAVIS RD	ACTON	MA 01720	SCOTTY HOLLOW DR #U-E33
11	4	12	27E	NOLAN JOHN J	LOREEN NOLAN	D27 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E34
11	4	12	28D	KIMANI JULIAH		D28 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E35
11	4	12	29E	BENROS AARON &	BENROS CATHLEEN S	E28 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E36
11	4	12	29D	SKOOG INGRID		D29 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E37
11	4	12	29E	PERROTTI GREG D		E29 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E38
11	4	12	30D	KULKARNI SUSHIL &	SWATI SUSHIL KULKARNI	29 HIBISCUS WY	FRASHER	MA 03062	SCOTTY HOLLOW DR #U-E39
11	4	12	30E	SEALE JOHN W JR		E30 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E40
11	4	12	31D	WITHYCOMBE EDWARD J JR &	CRAIG T WITHYCOMBE	D31 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E41
11	4	12	31E	MACACHERN JUAN		E31 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E42
11	4	12	32D	SCARLEN CHRISTINE L		D32 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E43
11	4	12	32E	SRINIVAS KRITHIKA		936 REDWOOD DRIVE	DANVILLE	CA 94506	SCOTTY HOLLOW DR #U-E44
11	4	12	33D	DOVALE JENNIFER M		D33 SCOTTY HOLLOW DR	NO CHELMSFORD	MA 01863	SCOTTY HOLLOW DR #U-E45

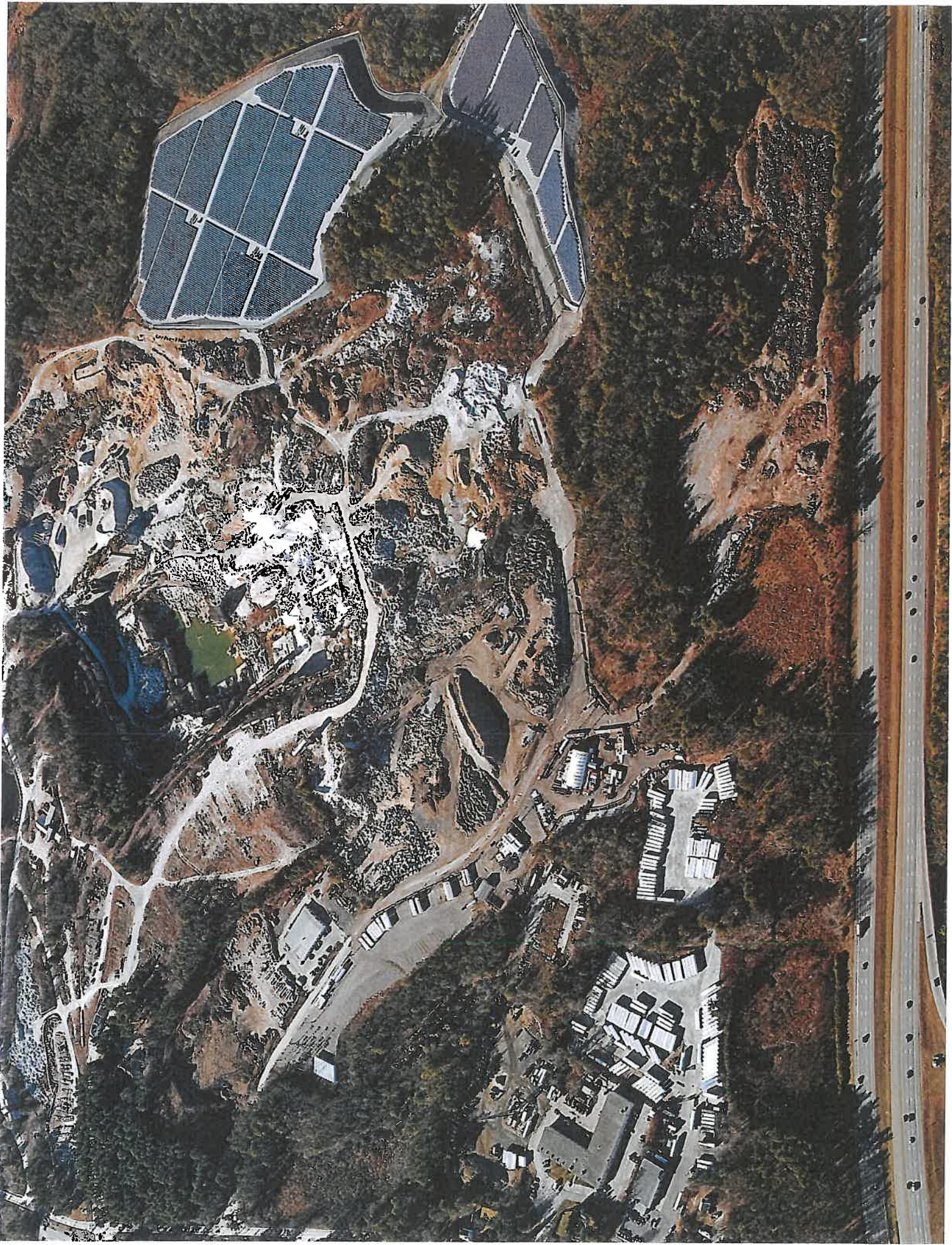
# ABUTTERS LISTING CHELMSFORD, MA

Map	Block	Lot	Unit	Owner's Name	Co Owner's Name	Address	City	ST	Zip	Parcel Location
11	4	12	33E	SHAH PARESH K &	MEETA P SHAH	17 LOON WAY	WESTFORD	MA	01866	SCOTTY HOLLOW DR #U-E33
11	4	12	34D	COAN KATHRINE R &	KENNETH H COAN	D34 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-D34
11	4	12	34E	HAYWOOD FRANK M &	MARIE C SORRENTINO	E34 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E34
11	4	12	35E	CUZZIERE BAREARA		E35 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E35
11	4	12	36E	DAY WARY ANN		E36 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E36
11	4	12	37E	CALLAHAN DAVID J		E37 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E37
11	4	12	38E	LEHUREUX MARGARET M		E38 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E38
11	4	12	39E	FARRELL MARGARET C		E39 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E39
11	4	12	40E	SULLIVAN WILLIAM F &	ADELINE L SULLIVAN	808 3BR AVE W	BRADENTON	FL	34205	SCOTTY HOLLOW DR #U-E40
11	4	12	41E	DUNLAY ROBERT	LAUREN ANNE DUNLAY	E41 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E41
11	4	12	42E	NEWTON ALBERT S		E42 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E42
11	4	12	43E	GAUGHAN KAREN M		E43 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E43
11	4	12	44E	VO MINH DUC H		E44 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E44
11	4	12	45E	NINDEL MARK D	PATRICIA NINDEL	E45 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E45
11	4	12	46E	CONLON ELIZABETH A		E46 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E46
11	4	12	47E	LEONARD MARY GAIL		E47 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E47
11	4	12	48E	BOGIN SHARON J		E48 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E48
11	4	12	49E	DEVITA NICE M		E49 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E49
11	4	12	50E	SILVA GLENN L		E50 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E50
11	4	12	51E	GRENIER DONALD E SR &	SANDRA J GRENIER	E51 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E51
11	4	12	52E	BOON GARY K &	C/O BEVERLY WHITE	E52 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E52
11	4	12	53E	COEMIER JOHN JOSEPH	C/O VIRENDRA S WARKE	E53 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E53
11	4	12	54E	BARRESI WILLIAM A &	HANNAH CUMPTON	E54 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E54
11	4	12	55E	CUMPTON ADRIAN &		E55 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E55
11	4	12	56E	HILLMAN GERALD W		E56 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E56
11	4	12	57E	CORSETTI JEANNETTE		E57 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E57
11	4	12	58E	MEYER PAMELA A		E58 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E58
11	4	12	59E	BOUCHER PAULA M TRUSTEE	PMB FAMILY TRUST	E59 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E59
11	4	12	60E	VAUGHAN WILLIAM H &	SHELLA ANNE VAUGHAN	E60 SCOTTY HOLLOW DR	NO CHELMSFORD	MA	01863	SCOTTY HOLLOW DR #U-E60

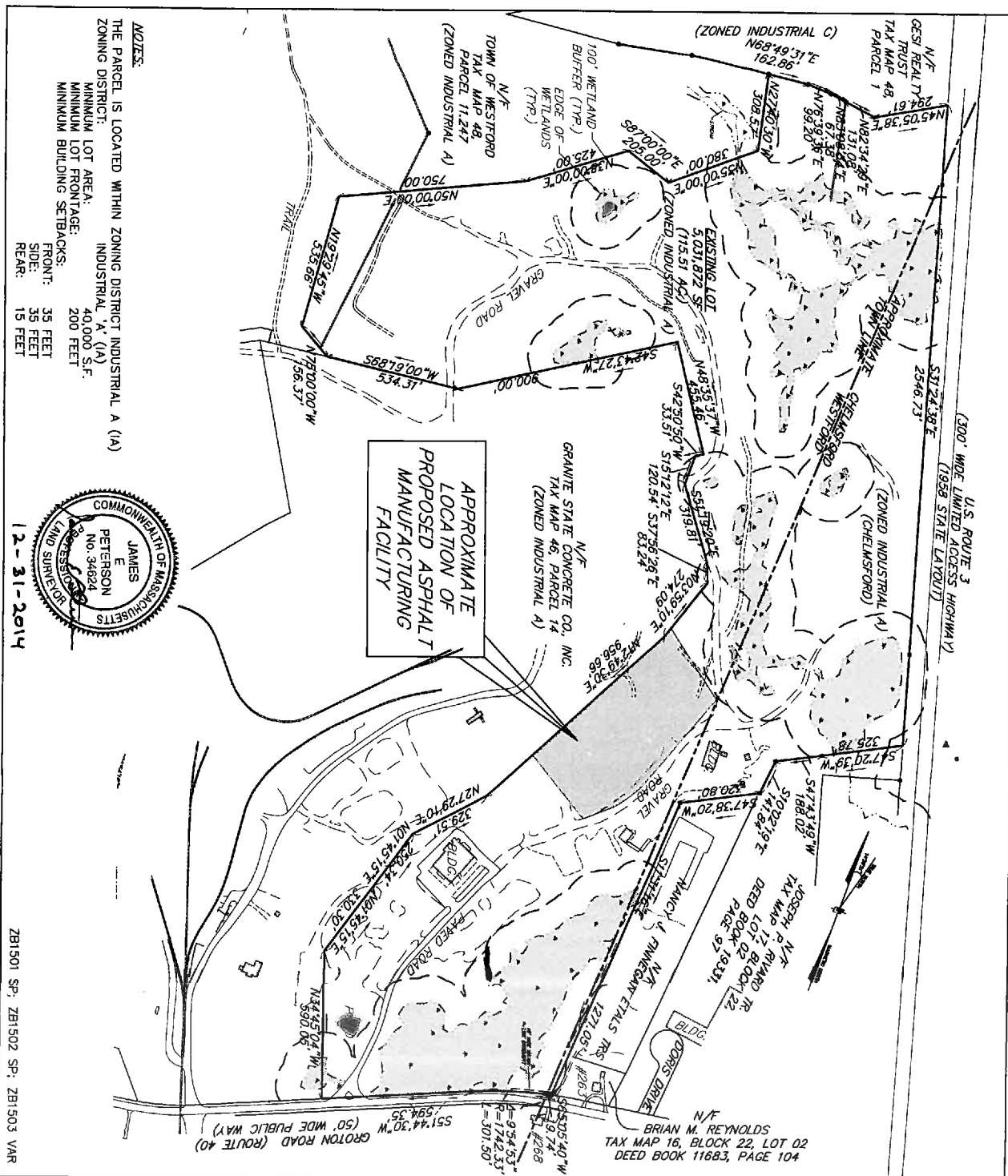
# ABUTTERS LISTING CHELMSFORD, MA

Map	Block	Lot	Unit	Owner's Name	Co Owner's Name	Address	City	ST Zip	Parcel Location
10	4	1		MASSACHUSETTS	COMMONWEALTH OF	MASS HIGHWAY DEPT	BOSTON	MA 02116-3973	GROTON RD OFF
10	4	2		CONGREGATIONAL CHURCH	% CLAUDIA LEMASURIER	5 JENSEN AV	CHELMSFORD,	MA 01824	LEDGE RD OFF
10	22	1		540 GROTON ROAD LLC		31 MILK SUITE 501	BOSTON	MA 01209	GROTON RD OFF
11	4	13		CHELMSFORD TOWN OF		50 BILLERICA RD	CHELMSFORD	MA 01824	GROTON RD OFF
16	22	1		LOISELLE NANCY J TRS		7 DORIS DR, SUITE 6B	NO CHELMSFORD	MA 01863	DORIS DR
16	22	2		DONNELLY KERRIE &		263 GROTON RD	NO CHELMSFORD	MA 01863	263 GROTON RD
17	22	1		RIVARD JOSEPH P TRUSTEE		61 WESTFORD ST	DUNSTABLE	MA 01827	1 WARD WY
17	22	2		OF RIVARD FAMILY TRUST		7 DORIS DR	NO CHELMSFORD	MA 01863	7 DORIS DR
17	22	6		LOISELLE RONALD J TRUSTEE		255 GROTON RD	NO CHELMSFORD	MA 01863	255 GROTON RD
22	92	1		BURNHAM GEORGE H JR	MARIE BURNHAM	266 GROTON RD	NO CHELMSFORD	MA 01863	266 GROTON RD
22	92	2		LEEDBERG SCOTT E &	JUNE A LEEDBERG	268 GROTON RD	NO CHELMSFORD	MA 01863	268 GROTON RD
23	92	7		LEEDBERG DAVID N TRUSTEE	OF 268 GROTON RD RLY TR	258 GROTON RD	NO CHELMSFORD	MA 01863	258 GROTON RD
23	92	8		POWER ROGER &	STEPHANIE M POWER	264 GROTON RD	NO CHELMSFORD	MA 01863	264 GROTON RD
23	92			GAUNTLETT GORDON T JR	ANDREA GAUNTLETT				









Job. No. 09-102	<b>ZONING BOARD OF APPEALS PLAN</b> <b>ASPHALT MANUFACTURING FACILITY</b> <b>540 GROTON ROAD</b> <b>WESTFORD, MA</b>	Prepared for: 540 GROTON ROAD, LLC 164 BURKE STREET, SUITE #1 NASHUA, NH 03060		
Dwg. No. 9955		Calc. MG	Draft MAW	Check JP
Sheet 1 of 1		Scale: 1" = 400' Copyright © 2014 DECEMBER 31, 2014		